

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

OSBALDO JOSE-NICOLAS, )  
 )  
Plaintiff, )  
 )  
v. ) No. 15-cv-964-NJR-DGW  
 ) East St. Louis, Illinois  
NATHAN BERRY, et al., )  
 )  
Defendant. )

TRANSCRIPT OF JURY TRIAL PROCEEDINGS  
DAY #1 - TESTIMONY  
BEFORE THE HONORABLE NANCY J. ROSENSTENGEL  
UNITED STATES DISTRICT COURT

AUGUST 14, 2018

APPEARANCES:

FOR THE PLAINTIFF: Sarah C. Grady, Esq.  
Julie M. Goodwin, Esq.  
Adair Crosley, Esq.  
Loevy & Loevy  
311 N. Aberdeen, 3rd Floor  
Chicago, IL 60607  
312-243-5900

FOR THE DEFENDANTS: Jeremy Tyrrell, Esq.  
Joseph D. Bracey, Jr., Esq.  
Illinois Attorney General's Office  
500 S. Second Street  
Springfield, IL 62701

INTERPRETER: Rafael Saloma-Gonzalez

Stephanie Rennegarbe, RDR, CRR, CBC  
IL CSR #084-003232  
301 West Main Street  
Benton, IL 62812  
618-439-7735  
Stephanie\_Rennegarbe@ilsd.uscourts.gov

I N D E X**WITNESSES CALLED ON BEHALF OF THE PLAINTIFF:**

	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>
Osbaldo Jose-Nicolas	4	28	33	
Richard Harrington	36			
Kevin Reichert	47			
(Deposition)				
Clayborn Smith	52	77	90	

E X H I B I T S

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>ID'D</u>	<u>ADMT'D</u>
Plf's 8 (pp 1-5)	Letter w/Request	42	45
Plf's 29	Drawing	55	
Plf's 3	2/9/14 Letter	75	

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(Proceedings reconvened at 1:08 p.m. following jury selection and opening statements; jury not present.)

THE COURT: Be seated, everyone. We are ready to proceed with the Plaintiff's testimony. We have a new interpreter this afternoon, Mr. Rafael Saloma-Gonzalez.

Deana, if you would please administer the oath to Mr. Gonzalez.

(Interpreter, Rafael Saloma-Gonzalez, sworn).

THE COURT: Okay. So, Mr. Gonzalez is going to interpret the question and then the answer, so we need to go kind of slowly here. If at any point you need to take a break, stop me and let me know.

Are we ready?

MS. GOODWIN: Yes.

THE COURT: Gary, bring in the jury.

(Jury in).

THE COURT: All right. Be seated, everyone. Welcome back, ladies and gentlemen. I apologize, it took us a little longer to be ready to go.

We have a different interpreter here now, Mr. Rafael Saloma-Gonzalez. So, he's going to be interpreting the question that's asked and then Mr. Nicolas's response.

As you see, Mr. Nicolas is the Plaintiff's first witness. He's in the stand and ready to go.

1                   So, you may proceed with your questions.

2

3                   DIRECT EXAMINATION

4 BY MS. GOODWIN:

5 Q. Osbaldo, could you please state your full name for the  
6 record?

7 A. My name is Osbaldo Jose-Nicolas.

8 Q. All right. And you are currently incarcerated at Menard  
9 Correctional Center, correct?

10 A. Correct.

11 Q. You are at Menard because you have been convicted of a  
12 felony, correct?

13 A. Yes.

14 Q. Now, is Menard -- Is that located very far from your  
15 family?

16 A. Yes.

17 Q. Are you able to stay in touch with your family?

18                   MR. TYRRELL: Objection, Your Honor; relevance.

19                   THE COURT: That's overruled. This is just  
20 background information.

21 A. Yes. Yes, I can.

22 Q. And how so?

23 A. Via telephone, letters.

24 Q. Are you currently working in a job at the prison?

25 A. Yes.

1 Q. What are your responsibilities?

2 A. Right now I am working in the kitchen.

3 Q. What do you do in the kitchen?

4 A. I started on the line serving food.

5 Q. Okay.

6 A. And now recently I am with dishes.

7 Q. You wash dishes?

8 A. Yes.

9 Q. How many hours a day do you work?

10 A. From 1:00 in the afternoon until 6:00 in the evening.

11 Q. Is that every day?

12 A. Yes, but Thursdays.

13 Q. Okay. Now, we are here today to talk, of course, about  
14 the events that occurred on February 5th of 2014. You were at  
15 Menard then, too, correct?

16 A. Yes.

17 Q. Okay. So, tell us where within the prison you were being  
18 housed on or just before February 5th of 2014.

19 A. I was in the West house.

20 Q. The West house?

21 A. Yes.

22 Q. Okay. And were you on the -- Which side of the West house  
23 were you typically housed on?

24 A. Odd side.

25 Q. The odd side?

1 A. O-D-D, odd side.

2 Q. Okay. So, backing up even to the basics, West house is a  
3 building, correct?

4 A. Yes.

5 Q. That's where inmates are housed?

6 A. Yes.

7 Q. So, you were typically housed on the odd side of that  
8 building, right?

9 A. Yes.

10 Q. And other inmates are typically, then, housed on the even  
11 side?

12 A. Correct.

13 Q. Okay. So, since you were housed on the odd side does that  
14 mean you would ever see anybody on the even side?

15 A. No, you can't.

16 Q. Okay. Of course, the guards at Menard would control where  
17 you walk and where you go?

18 A. Correct.

19 Q. Would you, being housed on the odd side of the building,  
20 ever have reason, then, to walk down the even side of the  
21 building?

22 A. No, you couldn't.

23 Q. Would you, on the odd side of the building, eat at the  
24 same time as the even-side prisoners of the building?

25 A. No.

1 Q. Would you go to yard at the same time as prisoners held on  
2 the even side?

3 A. No.

4 Q. Now, during the morning of February 5th of 2014, am I  
5 correct that you were brought to an even side holding cell?

6 A. Correct.

7 Q. Were you with anyone in the cell?

8 A. I'm sorry, I didn't understand the question.

9 Q. When you were in the holding cell on February 5th of 2014,  
10 was anyone else in the cell with you?

11 A. Yes, there was -- Yeah, there was somebody else.

12 Q. And who was that?

13 A. Edgar Diaz.

14 Q. I'm sorry. Is that *Elgard* Diaz?

15 A. No, an inmate.

16 THE COURT: Diaz.

17 Q. All right. I'm sorry, I misunderstood.

18 All right. Can you -- So, in the holding cell, then,  
19 so that we are clear, it was you and Edgar Diaz?

20 A. Correct.

21 Q. Okay. All right. Can you describe the holding cell that  
22 you were in?

23 A. It's a cell like two meters wide and about three and a  
24 half meters long and about three and a half meters high and  
25 it's covered with bars. Two and a half meters, and it's

1 covered with bars.

2 Q. Can you describe the bars for us?

3 A. It's better if I draw it.

4 Q. Well, that's okay. Backing up a bit, could you see out of  
5 the holding cell?

6 A. Yes.

7 Q. Okay. So, the bars were spaced far enough apart that you  
8 could see out?

9 A. Correct.

10 Q. And that holding cell was located -- Well, strike that.

11 When you looked out could you see other housing  
12 cells?

13 A. Yes; yes, I could see.

14 Q. Okay. Generally what was going on when you were in the  
15 holding cell?

16 A. They were running lines, for example, to the store, to the  
17 gymnasium, to get food.

18 Q. What do you mean by *running lines*?

19 A. The inmates would depart and enter into the building.

20 Q. Okay. So, there were inmates moving back and forth before  
21 where you were standing in the holding cell?

22 A. Correct.

23 Q. Could you see any guards while you were in the holding  
24 cell?

25 A. Yes, but at times it was like if they started from up top,



1 then I could see them up top. Or, if they started below, I  
2 could see them below.

3 Q. Okay. So, there's different tiers in the holding cell?

4 A. I'm not -- I didn't understand the question.

5 Q. Okay. What guards could you see directly outside your  
6 holding cell?

7 A. When they were below?

8 Q. Yes.

9 A. I could see two of the officers that are right there in  
10 front. There was a Major, I believe a Lieutenant, and then  
11 there were a couple of other officers aside from that.

12 Q. Okay. Osbaldo, on that day you were taken out of the  
13 holding cell and beaten, is that correct?

14 A. Correct.

15 Q. Right before that beating occurred what officers or guards  
16 did you see right in that area?

17 A. It was Officer Purdom; it was Sergeant Quartz; there was  
18 an Officer Snell; Berry, Officer Berry; and there was another  
19 officer -- or other officers, but I don't recall their names.

20 Q. Okay. And just so we are clear, it was Officer or  
21 Sergeant Qualls, correct?

22 A. Correct.

23 Q. Okay. Were some of those officers coming and going?

24 A. No.

25 Q. All right. Did Sergeant Qualls speak to you right before

1 the beating occurred?

2 A. Yes.

3 Q. What did he say to you, what did you say to him?

4 A. At that time, to be honest, when somebody would speak to  
5 me in English sometimes I understood a word, sometimes I  
6 couldn't. But, from what I understood, I mean, first he said  
7 some words that I didn't understand, but the ones that I did  
8 were after, and he said, "Face to the wall."

9 Q. And did you face the wall?

10 A. Yes.

11 Q. What did Sergeant Qualls then say to you next?

12 A. Afterward he said, "Sit down."

13 Q. Okay. So, you were facing the wall?

14 A. Yes.

15 Q. And that's when he said to sit down?

16 A. Yes.

17 Q. And did you do that?

18 A. No.

19 Q. Did Qualls appear angry at that time?

20 A. Yes.

21 Q. What did he say to you then?

22 A. He raised his voice and then he said to me, "Sit the fuck  
23 down."

24 Q. And what did you do or say in response?

25 A. The first instruction he gave, I told them, "The floor is

1 cold."

2 Q. Go ahead.

3 A. And when he said again angrily, "Sit the fuck down," I  
4 said, you know, once again, "The floor is cold."

5 Q. What happened next?

6 A. Afterward --

7 MS. GOODWIN: Your Honor, may I approach the witness?

8 THE COURT: You may.

9 Q. (By Ms. Goodwin) Osbaldo?

10 A. What's up?

11 MR. TYRRELL: I'm sorry, Your Honor. Perhaps we  
12 could have the jury take a brief recess unless Mr. Nicolas can  
13 compose himself.

14 THE COURT: Mr. Nicolas, do you need to take a short  
15 break?

16 A. Yes, please, Your Honor.

17 THE COURT: All right. Ladies and gentlemen, we will  
18 take a short break, we will use the restroom, about five  
19 minutes.

20 All rise for the jury.

21 (Jury out.)

22 THE COURT: Mr. Nicolas, I know this is hard for you,  
23 but we are going to have to get through it. We will give you  
24 a short break so you can get your composure, but we are going  
25 to have to get the witnesses on that we need to today.

1           Take a break, get some water, and we will be back in  
2   about five minutes.

3           Anything you want to say?

4           MS. GOODWIN: Your Honor, can I talk to the witness?

5           (Following a recess, proceedings continue in open  
6   court; jury present).

7           MS. GOODWIN: Your Honor, I apologize. Before we  
8   begin, I don't believe that the witness was sworn in for  
9   testimony. I think that we swore in --

10          THE CLERK: You're right.

11          THE COURT: Good point, good catch.

12          MS. GOODWIN: And we may want to have him swear that  
13   the testimony that he's given thus far is --

14          THE COURT: That's right. So, yeah, we swore in the  
15   interpreter. That's my bad.

16          So, Deana, if you would please administer the oath.

17          (Plaintiff, Osbaldo Jose-Nicolas, sworn).

18          THE COURT: Okay. Mr. Nicolas, you are swearing that  
19   what you have given so far and what you will be giving is the  
20   truth?

21          MR. NICOLAS: Yes.

22          THE COURT: Okay. You may proceed.

23   Q. (By Ms. Goodwin) Osbaldo, since the incident of February  
24   5, 2014, have you ever been in the same room as Defendants  
25   Qualls, Berry, Purdom, and Snell?

1 A. If you would repeat the names of the people you listed,  
2 please.

3 Q. Qualls, Berry, Purdom, and Snell.

4 A. I'm sorry. I didn't understand what the question was you  
5 asked. Sorry.

6 Q. I'll withdraw that question.

7 Is it hard to be in the same room with the officers  
8 that beat you and describe what happened to you?

9 A. Yes.

10 Q. Go ahead.

11 A. Right now when I saw Officer Qualls and Officer Berry, but  
12 in particular Qualls, I started feeling afraid, and my heart  
13 started beating really fast.

14 Q. So, let's go back, then, to when you were in the holding  
15 cell on February 5th of 2014. Did Sergeant Qualls have you  
16 cuff up?

17 A. I'm sorry, I didn't understand what you were asking.

18 Q. Were you handcuffed at some point when you were in the  
19 holding cell?

20 A. Yes.

21 Q. What happened to you after the handcuffs were placed on  
22 you?

23 A. They took me out of the cell where they had me.

24 Q. Who's they?

25 A. Officer Qualls and Officer Berry, I think.

1 Q. And what happened next?

2 A. When I was handcuffed already they took me -- they took me  
3 -- they took me out, and Officer Qualls, they had me on the  
4 right -- Officer Qualls was on my right and Officer Berry was  
5 on my left side behind me.

6 Q. And what happened next?

7 A. They took me out roughly, quickly. When I turned around  
8 Officer Qualls hit me in the jaw, and I fell.

9 Q. Did you know that punch was coming?

10 A. No.

11 Q. Was it closed-fisted?

12 A. Yes.

13 Q. And did it hurt?

14 A. Yes, and I fell.

15 Q. What guards were you aware of who were nearby when that  
16 punch occurred?

17 A. It was Officer Snell and also Purdom, something like that.

18 Q. Did Officer Snell or Officer Purdom say anything to you  
19 after that punch occurred?

20 A. No.

21 Q. Did Officer Snell or Purdom or Berry, did they try and  
22 help you up off the floor?

23 A. No.

24 Q. So, after that first punch occurred what happened to you  
25 next?

1 A. I fell. Officer Berry had me -- was holding me from the  
2 arm, from the hand, and between Officer Berry and Officer  
3 Qualls, they lifted me up in a rough manner when they --  
4 Officer Berry took me, I believe he kind of led me, he kind of  
5 -- Officer Berry, when he lifted me, he kind of like guided my  
6 head toward like where the bathrooms were on the concrete.

7 Q. Osbaldo, did he slam your head against the concrete wall?

8 A. Yeah, he chunked my face into the concrete wall.

9 Q. All right. Now, that was around the corner, am I correct,  
10 from where you were in the holding cell?

11 A. The corner -- The concrete, from the bathrooms.

12 Q. Near the bathrooms?

13 A. Yeah, by the bathing area.

14 Q. The showering area?

15 A. Correct.

16 Q. So, when Officer Berry slammed your head into the concrete  
17 wall, what is the next thing that you remember happening?

18 A. Officer Qualls came up close to me and, once again, struck  
19 my jaw, and he was punching me then on the back side on the --  
20 on the stomach, and Officer Berry was hitting me on the back  
21 of the head and on the back, also.

22 Q. Did anyone come over and try and help you?

23 A. No.

24 Q. Did anyone try and stop the beating?

25 A. No.

1 Q. Did you fight back?

2 A. No, I was handcuffed.

3 Q. So, what was going through your mind?

4 A. Well, the first I was asking is why are you hitting me. I  
5 was asking myself the question. I was asking myself the  
6 question. I said why would they be hitting me?

7 Q. Now, what happened next, Osbaldo?

8 A. Well, they kept on hitting me on the back of the head, my  
9 back, the stomach, my private parts, and my legs until I fell.

10 Q. You fell down onto the floor?

11 A. Yes.

12 Q. And what happened next?

13 A. While that was going on I was wondering why that was  
14 happening, and I don't know if -- I don't know if I yelled. I  
15 was wanting to. But, I know that when I was being hit, like,  
16 you know, they knocked the air out of my stomach. And I  
17 didn't know -- I didn't know -- I didn't know -- I was just in  
18 a daze just from being -- getting hit. And I started to think  
19 that they wouldn't stop and that I wouldn't -- there wouldn't  
20 be another day for me. I just closed my eyes and I said, you  
21 know, "My God, help me," and then I would just be -- was  
22 feeling how the blows were being -- how the officers were  
23 going about hitting me.

24 Q. Did the beating eventually stop?

25 A. Yes.



1 Q. And you were taken out of the cell house?

2 A. I want to say something else, because it stopped, but then  
3 something else happened.

4 Q. Okay. And what else happened?

5 A. They -- When it stopped they lifted me up, you know, in a  
6 rough manner again, and I started to say -- I don't know if it  
7 came out. I was wanting to say, "Stop," but I don't know -- I  
8 don't know if that's what came out exactly, because I was  
9 trying to gasp for air.

10 Q. How is it that you were taken outside?

11 A. I'm sorry, I was going to say more. May I continue?

12 Q. I'm sorry, Osbaldo. Go ahead.

13 A. And he lifted me up roughly, and when I was trying to say,  
14 "Stop," Officer Qualls -- I don't know if he said, "Stop," but  
15 I could hear, he was like imitating, you know, the noises that  
16 I was making, the flinching, and he would go, "Mm-hmm, shut  
17 the fuck up," and then he hit me once again.

18 Q. Were you able to walk after this occurred?

19 A. I was shaking, trying to walk.

20 Q. Did you need help walking?

21 A. Yes.

22 Q. So, describe for us, then, how it was that you got from  
23 the West house holding cell area to the next building that you  
24 went to?

25 A. Sergeant Qualls took me by the left arm, but since I was

1 on -- when he snagged me roughly, he -- you know, I fell, but  
2 then he lifted me up.

3 Q. You never slipped on ice during that walk, correct?

4 A. No.

5 Q. And you were handcuffed the whole time?

6 A. Yes.

7 Q. Where did Sergeant Qualls take you after this beating  
8 occurred?

9 A. To segregation, which is the North house 2.

10 Q. Okay. And is that where you saw Defendant Lang, the  
11 medical technician?

12 A. Yes.

13 Q. And at the time that you saw Defendant Lang were you being  
14 held in a shower area?

15 A. Yes, they threw me down on the floor.

16 Q. Okay. That was in the floor of a cell that's in the  
17 shower area, correct?

18 A. Correct.

19 Q. So, can you describe that cell where you were being held?

20 A. It's a cell like -- more or less like 80 -- like 80 wide,  
21 two and a half long, two and a half high, more or less. More  
22 or less like halfway there's a wall, which is about a meter  
23 tall to cover up, you know, those people who are taking a bath  
24 there.

25 Q. Are there benches in the cell or the shower where you were

1 held?

2 A. No, there's just like a stand that stuck to the bars.

3 Q. Like a shelf?

4 A. Yes.

5 Q. Okay. Were you able to stand up, then, in the cell?

6 A. No.

7 Q. No. So, you were lying on the floor of the cell?

8 A. Yes.

9 Q. And were you in pain?

10 A. Extreme amount of pain, yes.

11 Q. What was going through your mind at that time?

12 A. I wasn't understanding -- I couldn't understand why the  
13 officers had assaulted me, and I just -- I just couldn't  
14 understand anything and I felt, like, worthless.

15 Q. Am I correct, then, that Defendant Lang, the medical  
16 technician, eventually came to see you in that cell?

17 A. Correct.

18 Q. And what is the first thing that Defendant Lang asked you?

19 A. She -- I don't know if she asked me for my name, but she  
20 asked, you know, "What are your injuries?"

21 Q. And what did you tell her?

22 A. That the officers from the West house had hit me, I had  
23 pain on my jaw, on my forehead, my stomach -- my stomach, my  
24 private parts, my legs, and my wrists.

25 Q. What was her response when you told her that it was guards

1 in the West house that had assaulted you?

2 A. She didn't make any comment to that effect. When I was  
3 telling her about my injuries she wasn't -- she wasn't taking  
4 notes, so I asked her, you know, "Why aren't you taking down  
5 notes?" And then she went and took from her desk -- She got  
6 from the desk some papers, but she was laughing, looking the  
7 whole time at the officer, and she was telling me -- she was  
8 saying, "Ah-hah, he wants a lawsuit." And from there on,  
9 that's when she started writing down notes. But, I don't know  
10 what else she wrote. I told her that I wanted the -- that my  
11 jaw was hurting very much so, and my forehead was swelled.  
12 But, I was asking her about my jaw, if she wouldn't be able to  
13 get some x-rays, because I was uncertain whether there might  
14 have been a fracture or some sort of dislocation. I told her  
15 also that it was hurting me quite a bit down here in my  
16 private parts and nearby on my leg, and she said, "Let me  
17 see." Since I wasn't feeling at ease showing myself to a  
18 nurse like that, but then she said, you know, "Let me see."  
19 So, then when I tried to go ahead and show her, then she said,  
20 "No, no, you know, I -- No, I don't want to see." And she  
21 didn't look me over, and then she left.

22 Q. When you say that Defendant Lang looked you over, you were  
23 still in the holding cell, correct?

24 A. Correct.

25 Q. And where was Defendant Lang standing?

1 A. She was right there outside the cell no more than a  
2 meter's distance away.

3 Q. So, she did not look at your legs, correct?

4 A. No.

5 Q. Did she look at your stomach area?

6 A. No.

7 Q. Did she look at your arms or your wrist?

8 A. No.

9 Q. Did she look at your back area, the back of your head?

10 A. No.

11 Q. Did she give you an ice pack?

12 A. No.

13 Q. Pain medication?

14 A. No, nothing at all.

15 Q. Did you want to see a doctor?

16 A. Yes.

17 Q. Now, afterwards you were taken to a segregation unit, is  
18 that correct?

19 A. Correct.

20 Q. While you were in segregation was it easy for you to get  
21 doctors' appointments?

22 A. No.

23 Q. In the first days when you were put into segregation, were  
24 you still in pain?

25 A. Yes, I was in an extreme amount of pain.

1 Q. Did you try and see a doctor or a nurse?

2 A. Yes.

3 Q. How did you try to do that?

4 A. When I heard -- Well, like I was close to the door, so  
5 when I heard that the keys were making noise, you know, like  
6 they were coming in, so when I heard the keys I turned like  
7 they would go by, but they wouldn't stop. You know, but when  
8 I heard them come by, you know, I would say, "I need some help  
9 here."

10 THE INTERPRETER: Oh, pardon me. The interpreter  
11 made a mistake.

12 A. (By the Interpreter) "Needed healthcare."

13 Q. Did any of the guards that walked by take you to  
14 Healthcare?

15 A. No.

16 Q. Did you eventually get to see a nurse?

17 A. Yes.

18 Q. How did you get the attention of the guards or the medical  
19 staff so that you could go see that nurse?

20 A. Since I was in extreme pain, and I noticed that the guards  
21 weren't stopping by to let me know that, you know, "Well, I'm  
22 going to get you -- get you some medical attention, I'm going  
23 to get a nurse to look you over," I tried to look for a way in  
24 which I could place a request for healthcare. So, I was  
25 looking like on the bed, beneath the bed, and I found some

1 papers down there, and I found like the tip of a pen. And I  
2 tried to write with it, but it wouldn't make a mark. You  
3 know, I think it was dried. There wasn't any ink left. So,  
4 the -- you know, the transparent cylinder that's on it, you  
5 know, I took the -- I took the tip, the metal tip out, and I  
6 cut out a piece of paper maybe about a square centimeter, so I  
7 started -- so I started twisting that little piece of paper in  
8 such a way that it would be able to penetrate the tip of that  
9 pen cap, the pen -- tip of the pen cap to be able to draw some  
10 of the ink out of there so as to be able to write. And that's  
11 how I was able to place a request for healthcare. It took me  
12 a long time, but I had to do it because I was in such an  
13 extreme amount of pain.

14 Q. Osbaldo, you would agree it's not easy to get healthcare  
15 when you are in segregation?

16 A. No. No, no, it's not easy, particularly so while in  
17 segregation.

18 Q. And aside from Medical, when you were in segregation were  
19 you able to communicate with anyone else who was back in the  
20 West house?

21 A. No.

22 Q. Now, two days after the incident were you able to see a  
23 nurse regarding the beating that had occurred?

24 A. Yes; yes.

25 Q. What did you tell that nurse about what happened to you?

1 A. I told them that the officers at the West house had struck  
2 me, that my jaw was hurting very much so, that I wanted to get  
3 it x-rayed so as to verify whether it had been fractured or  
4 dislocated, and it was hurting here on my private parts and my  
5 stomach and that I had two purple spheres, that just looking  
6 at them just frightened me.

7 Q. So, you have experienced anxiety about what occurred?

8 A. Yes.

9 Q. And you had nightmares?

10 A. Yes.

11 Q. Have you talked to mental health doctors at the prison  
12 about what occurred?

13 A. Yes.

14 Q. Now, after you reported to Defendant Lang, so going back  
15 to the day of the incident -- after you reported to her that  
16 it was officers in the West house that had beat you up, did  
17 anybody come talk to you about the beating?

18 A. No.

19 Q. After you told the nurse on February 7th that you had been  
20 assaulted by guards, did anybody from the prison come and talk  
21 to you about what had occurred?

22 A. No.

23 Q. And after you told any mental health professional at the  
24 prison that guards had assaulted you, did anybody from the  
25 prison come talk to you about the assault?



1 A. No.

2 Q. Now, did you file a grievance about this assault?

3 A. Correct.

4 Q. Can you just explain to the jury what a grievance is?

5 A. Yes.

6 Q. What is a grievance?

7 A. A grievance is a complaint -- A grievance is a complaint  
8 -- like if you want to place a complaint, like if you have --  
9 if you have like health symptoms or if some officers had  
10 beaten you or if you want a transfer, then you place a  
11 grievance with a counselor, and then you wait.

12 Q. So, a grievance is a form that you write out and it's your  
13 way to communicate with the prison, correct?

14 A. Yes.

15 Q. After you filed a grievance about the beating that had  
16 occurred, did anybody from the prison at Menard come and talk  
17 to you about that?

18 A. No.

19 Q. Were you surprised that nobody from the prison had talked  
20 to you or interviewed you about what had occurred?

21 A. Yes.

22 Q. And why is that?

23 A. Yes, then because I -- you know, I was also able to write  
24 a letter, I think it's what's called a *kite*, and I was able to  
25 write this to a counselor. I wrote down LT, and then I

1 presented it not to the counselor, but to the Lieutenant I --

2 Q. I/A?

3 A. Yeah, I/A.

4 THE COURT: As in Internal Affairs?

5 Q. Yes.

6 A. Yes.

7 Q. So, you attempted to communicate with the Lieutenant of  
8 Internal Affairs about the beating that had occurred?

9 A. Yes.

10 Q. Were you aware as to whether anyone else, such as Edgar  
11 Diaz, had spoke to anybody at Internal Affairs about the  
12 beating that had occurred?

13 A. No.

14 Q. Back in February 2014, were you even aware of who an  
15 inmate named Clayborn Smith was?

16 A. No.

17 Q. No. And you never spoke to Mr. Smith, to your knowledge,  
18 ever, correct?

19 A. Correct.

20 Q. So, Osbaldo, was today the first time that you were  
21 actually able to tell the story about what happened to you on  
22 February 5, 2014?

23 A. Yes.

24 Q. Can you explain to the jury why you filed this lawsuit?

25 A. Yes, I placed this lawsuit because the officers can't be

1 -- they just can't be beating up prisoners without having  
2 their done anything. I understand that I made a mistake in  
3 not following the order that was given for me to sit down.  
4 You know, I told them that the floor was cold, and for that,  
5 you know, he could have given me a ticket for disobeying a  
6 direct order. But, they can't be beating me up for not  
7 obeying that order. And, because of that, that's why I went  
8 forth with this lawsuit, so that in the future other prisoners  
9 don't have to go through this for not following orders.

10 Each inmate is a different case, and I want to change  
11 what will happen on the outside with me. You know, what I did  
12 was without thinking. That's why I am here locked up. But, I  
13 want to forge ahead and that's why, you know, I want to -- I  
14 want to be able to not do bad things; to do good things.

15 Q. Thank you. I don't have anything else.

16 THE COURT: All right. Mr. Interpreter, do you need  
17 a break?

18 THE INTERPRETER: The interpreter has not answered,  
19 but your witness said, "Yes, please."

20 THE COURT: Okay. We will take a short break, about  
21 ten minutes. All rise for the jury.

22 (Jury out).

23 THE COURT: All right. Let Mr. Nicolas have a break,  
24 and then bring him back to the stand.

25 (Following a recess, proceedings continue in open

1 court).

2 THE COURT: Okay. Are we ready for  
3 cross-examination?

4 MR. TYRRELL: Yes, Your Honor.

5 THE COURT: We are ready.

6 (Jury in).

7 THE COURT: Be seated, everyone. We will now have  
8 cross-examination, Mr. Tyrrell.

9 MR. TYRRELL: Thank you, Your Honor.

10

11 CROSS EXAMINATION

12 BY MR. TYRRELL:

13 Q. Good afternoon, Mr. Nicolas. My name is Jeremy Tyrrell.

14 A. Good afternoon.

15 Q. I just have some hopefully brief and short questions for  
16 you, sir.

17 A. Okay.

18 Q. To clarify, is it -- So, thinking back to when you were on  
19 the odd side of West cell house, is it your testimony that you  
20 were unable to communicate with inmates on the even side of  
21 West cell house?

22 A. Correct.

23 Q. And you have been placed on both the even and odd sides of  
24 the West cell house at Menard, correct?

25 A. In all the houses that I have been to, yes.

1 Q. And so West cell house, you were both on the even and the  
2 odd side?

3 A. That takes place in every house.

4 Q. Okay. And it's your testimony you don't know Clayborn  
5 Smith, correct?

6 A. No, I don't know him.

7 Q. Okay. Do you recall being on the even side of West cell  
8 house in April 2013 through October 2013?

9 THE INTERPRETER: Excuse me. Could you repeat the  
10 question for the interpreter?

11 Q. Absolutely. Do you recall being placed on the West cell  
12 house of Menard between April 2013 and October 2013?

13 A. Would you specify maybe better like what gallery, exactly,  
14 so maybe I could recollect?

15 Q. Sure. Do you recall being in the West cell house on 8  
16 Gallery from April 12th, 2013, through October 2, 2013?

17 THE INTERPRETER: April 2 through October 2?

18 Q. April 12, 2013 through October 2, 2013.

19 A. Yes.

20 Q. It's your testimony that Lieutenant Qualls was the first  
21 person to hit you, and he punched you in, I think, the face,  
22 you said?

23 A. On the jaw.

24 Q. Okay. Was that inside the holding cell or was that  
25 outside the holding cell?

1 A. The door was open, so I don't know if it was on the inside  
2 or outside, but it was as they were taking me out.

3 Q. Did Lieutenant Qualls enter the holding cell to hit you in  
4 the jaw?

5 A. No, I didn't -- It was right after -- after the door was  
6 open.

7 Q. Where was Officer Purdom when Lieutenant Qualls hit you in  
8 the jaw?

9 A. He was in the -- He was in the right corner looking at  
10 him.

11 Q. How far away?

12 A. No more than four meters.

13 Q. How about Officer Snell? Where was Officer Snell when  
14 Lieutenant Qualls hit you in the jaw?

15 A. He was on the left side outside of the holding cell.

16 Q. How far away was Officer Snell?

17 A. No more than three meters away.

18 Q. I believe you said after Lieutenant Qualls hit you in the  
19 jaw you fell to the ground, is that correct?

20 A. Correct.

21 Q. And then Officer Berry helped pick you up off the ground?

22 A. Correct.

23 Q. And then is it your testimony the next attack happened in  
24 the shower area of the West cell house?

25 THE INTERPRETER: Your interpreter blanked, sorry.

1 Q. In the shower area.

2 THE INTERPRETER: In the shower area.

3 Q. West cell house.

4 A. Yes.

5 Q. Did Officer Purdom follow you to the shower?

6 A. I wasn't able to see him.

7 Q. Did Officer Snell follow you to the shower?

8 A. No.

9 Q. While you and Mr. Diaz were the holding cell were there  
10 different line movements going by the holding cell?

11 A. Yes.

12 Q. Did you or Mr. Diaz talk to any of the offenders going by  
13 the holding cell?

14 A. No.

15 Q. Okay. So, it's your testimony you didn't talk to anyone  
16 -- any of the offenders passing by the holding cell of the  
17 line movements?

18 A. I apologize if I had started a conversation. That is, I'm  
19 sorry, your question, whether I started a conversation?

20 Q. My question, Mr. Nicolas, is whether or not you talked to  
21 any of the inmates on the line movement when you were in the  
22 holding cell.

23 A. Yes.

24 Q. Yes, you did talk to some of the inmates?

25 A. Yes.

1 Q. Okay. I believe you testified that you saw Nurse Lang in  
2 the North 2 shower, is that correct?

3 A. Correct.

4 Q. Were you wearing a jumpsuit when you saw Ms. Lang?

5 A. Correct.

6 Q. Did you have handcuffs on when you saw Nurse Lang?

7 A. I don't recall.

8 Q. Okay. Did Ms. Lang communicate to you in English?

9 A. Yes.

10 Q. And were you able to communicate with Ms. Lang in English?

11 A. Yes.

12 Q. And you're able to show her parts of your body that were  
13 hurting?

14 A. No.

15 Q. What parts of the body were you not able to show Ms. Lang?

16 A. Right here in my private area.

17 Q. Okay. I believe you said today that you sent a letter to  
18 the Internal Affairs lieutenant, is that correct?

19 A. Correct.

20 Q. Do you have a copy of this letter?

21 A. No.

22 Q. Okay. Thank you, Mr. Nicolas. I don't have any further  
23 questions.

24 THE COURT: Thank you, Mr. Tyrrell. Any Redirect?

25 MS. GOODWIN: We do, Your Honor.



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REDIRECT EXAMINATION

BY MS. GOODWIN:

Q. Osbaldo, you were asked questions about talking to inmates in the line movement while you were in the holding cell.

A. Yes.

Q. Just to clarify, did somebody speak to you?

A. Yes.

Q. And then you responded to them?

A. Correct.

Q. And what did that person say to you and what did you say to them?

A. He said the lines that were formed with me -- and I was standing there -- a person, one of the inmates who I didn't know, said to me, "Are you doing good?" And I said, "I'm good."

Q. Okay. And then when you were being examined by Defendant Lang were you in long sleeves and long pants?

A. I recall that I had on a sweatshirt with long sleeves.

Q. Okay. And long pants, as well?

A. Yes.

Q. All right. Now, you were also asked questions that involved your housing history at Menard.

A. Yes.

Q. And I believe it was in 2013 that you were on the even

1 side of the West cell house?

2 A. In Gallery 8, yes.

3 Q. Okay. So, I just want to be clear, though, that in the  
4 weeks or months leading up to February 5th of 2014, you were  
5 housed on the odd side of the building?

6 THE INTERPRETER: He was housed on the what? I'm  
7 sorry.

8 Q. Odd side.

9 A. Yes.

10 Q. And then am I correct that on February 5th of 2014,  
11 immediately after the beating occurred you were taken to  
12 segregation?

13 A. Correct.

14 Q. And in the days after that the beating occurred, you  
15 remained in segregation, is that correct?

16 A. Correct.

17 Q. Okay. All right. Thank you.

18 THE COURT: All right.

19 MR. TYRRELL: I have nothing additional, Your Honor.

20 THE COURT: All right. Thank you. Ladies and  
21 gentlemen, we are going to take a short break. I believe our  
22 next witness will be by video. We are going to get that set  
23 up and everything. So, you can just take a break, get a  
24 drink, use the restroom, whatever you need to do.

25 Ray is filling in now for Gary, so he will take you

1 back, take care of you. So, all rise for the jury.

2 (Jury out).

3 THE COURT: Be seated, everyone. Is Mr. Smith our  
4 next witness?

5 MS. GRADY: No, we just have two brief witnesses to  
6 put in front. We have Mr. Harrington, who's here. He will be  
7 five to ten minutes. Then we have five lines of deposition  
8 testimony to read.

9 THE COURT: Perfect. So, I knew we needed to break,  
10 so that's why I said something about the video.

11 THE CLERK: Do you want Brian to go ahead and come  
12 in?

13 THE COURT: Why don't we have Brian come in, and we  
14 will get the witnesses set up briefly.

15 (Following a recess, proceedings continue in open  
16 court; jury in.)

17 THE COURT: Plaintiff may call your next witness.

18 MS. GRADY: Thank you, Your Honor. Plaintiff calls  
19 Mr. Harrington to the stand.

20 THE COURT: All right. Mr. Harrington. You can come  
21 up here and have a seat. Good afternoon, sir.

22 Deana, if you would administer the oath.

23 (Defendant, Richard Harrington, sworn).

24 THE CLERK: Thank you. Please be seated.

25 Please state your name and spell your last name for

1 the record.

2 MR. HARRINGTON: Richard Harrington,  
3 H-A-R-R-I-N-G-T-O-N.

4

5 DIRECT EXAMINATION

6 BY MS. GRADY:

7 Q. Good afternoon, sir.

8 A. Good afternoon.

9 Q. Can you please tell the jury where you are currently  
10 working?

11 A. I'm retired.

12 Q. And where are you retired from?

13 A. Menard Correctional Center.

14 Q. What is your job -- What was your job title there when you  
15 retired?

16 A. Warden.

17 Q. When did you retire?

18 A. April of 2014.

19 Q. We are here to talk about an incident that happened back  
20 in February of 2014. So, at that time you were the warden of  
21 the facility, is that correct?

22 A. Yes.

23 Q. As Warden it was your job to make sure that employees new  
24 about certain policies and procedures that the Illinois  
25 Department of Corrections had in place, right?

1 A. Part of the job, yes.

2 Q. And I'm sure you had a lot of duties as Warden, right, --

3 A. Yes.

4 Q. -- day-to-day, lots of stuff going on?

5 A. Yes.

6 Q. But, that was one of your jobs, right?

7 A. Yes.

8 Q. And, another one of your jobs was to actually approve  
9 policies that were specific to the prison, right?

10 A. I'm not sure how to answer that.

11 Q. Okay. Are you familiar with institutional directives?

12 A. Yes.

13 Q. Can you tell the jury what those are?

14 A. Those are directives that -- rules and regulations that  
15 pertain directly to Menard Correctional Center.

16 Q. Okay. And as Warden it was your job to sign off on those  
17 institutional directives, right?

18 A. Yes.

19 Q. You worked with a team to make sure that those  
20 institutional directives were good policies that were in place  
21 at Menard, right?

22 A. Yes.

23 Q. And you wanted those policies to protect your officers,  
24 correct?

25 A. Correct.

1 Q. And you wanted those policies to protect the prisoners  
2 that you were responsible for protecting, correct?

3 A. Correct.

4 Q. You told your officers that they should take those  
5 institutional directives that are specific to Menard, they  
6 should take those seriously, right?

7 A. I didn't specifically tell them, but they knew that, yes.

8 Q. And they knew that, because it was the expectation of you  
9 and the other administrative staff at the prison to -- that  
10 they follow those policies, right?

11 A. Yes.

12 Q. And it was your expectation similarly that the officers  
13 under your watch -- the officers under your watch followed the  
14 policies set in place at all of the Illinois Department of  
15 Corrections facilities, right?

16 A. Yes.

17 Q. And there are policies that apply to all sorts of prisons  
18 all over the state, right?

19 A. Yes.

20 Q. Let's talk today about use-of-force policies.

21 Now, the Illinois Department of Corrections has  
22 policies that limit when an officer can use force, right?

23 A. Yes.

24 Q. And they tell officers about times that it's okay to use  
25 some amount of force, correct?

1 A. Yes.

2 Q. And times when it's not okay to use any force at all,  
3 right?

4 A. Correct.

5 Q. And it was your job to make sure that those follows were  
6 polled at Menard, right?

7 A. Part of my job, yes.

8 Q. And making sure those policies were followed, that was to  
9 protect your -- the prisoners that you were charged with  
10 protecting from abuse by staff, correct?

11 A. It was designed to protect both inmates and staff.

12 Q. Right; to keep a safe institution for everybody who's  
13 there, --

14 A. Yes.

15 Q. -- prisoners and staff alike?

16 A. Yes.

17 Q. And you made sure officers were told about the importance  
18 of following those use-of-force policies, right?

19 A. Yes.

20 Q. The Department's policy statewide is that force should  
21 only be used as a last resort, correct?

22 A. I don't remember specifically what the AED says.

23 Q. Okay. Can you tell me, generally speaking, would you  
24 agree that the Department's policy discouraged use of force  
25 except when necessary to achieve legitimate purposes?

1 A. Correct.

2 Q. And would you agree that the Department's policy, not  
3 verbatim, but in substance, told officers once you have  
4 achieved whatever goal you were allowed to use force for, once  
5 that goal has been achieved no more force, right?

6 A. Correct.

7 Q. In other words, the force should stop when the goal and  
8 the order has been restored, right?

9 A. Yes.

10 Q. And corporal punishment was never allowed at Menard for  
11 any reason, correct?

12 A. Correct.

13 Q. And can you tell the jury what corporal punishment is?

14 A. That is physical abuse as a result of an inmate making you  
15 mad for some reason or doing something you didn't like.

16 Q. And corporal punishment, that's prohibited even when an  
17 officer gets really upset, right?

18 A. Yes.

19 Q. Even when an inmate challenges an officer's authority,  
20 right?

21 A. Yes.

22 Q. Even when an inmate fails to respond to a direct order in  
23 the right way, correct?

24 A. Correct.

25 Q. And that prohibition on corporal punishment, that policy



1 was in place at Menard the whole time you served as warden  
2 there, correct?

3 A. Yes.

4 Q. And that policy was in place as of February 5, 2014,  
5 correct?

6 A. Yes.

7 Q. And that was an important policy, correct?

8 A. They all are; but, yes.

9 Q. Would it be okay under the Department's use of force  
10 policy to punch a prisoner because he didn't follow an order  
11 to sit down?

12 A. I would have to have more information on the particular  
13 incident.

14 Q. Sure. If you had a prisoner in a holding cage and you  
15 told him to sit down and he did not comply immediately, would  
16 that be a reason to punch him in the jaw?

17 A. No.

18 Q. That would be in violation of the use of force policy at  
19 Menard, correct?

20 A. Yes.

21 Q. And would it be okay under that same scenario for an  
22 officer to kick a prisoner anywhere on his body?

23 A. No.

24 Q. That would be in violation of the use of force policy at  
25 Menard, right?

1 A. Yes.

2 Q. I want to talk to you about a letter you received. Do you  
3 recall receiving a letter from a man named Randy Plunk on  
4 February 19, 2014?

5 A. No.

6 Q. Okay.

7 MS. GRADY: Can I show just the witness?

8 Q. (By Ms. Grady) All right. You have on your screen right  
9 in front of you what's been marked as Plaintiff's Exhibit 8.  
10 And this is -- I have just zoomed in on the substance of the  
11 letter. Does that refresh any recollection for you about  
12 receiving a letter on February 19, 2014?

13 A. No, I don't remember the letter.

14 Q. Do you know who Randy Plunk is?

15 A. Yes.

16 Q. Who is he?

17 A. He was a commander of the Investigations Unit.

18 Q. And was that Investigations Unit one that was in Menard in  
19 particular, or was that one that was housed centrally to the  
20 Department?

21 A. Statewide.

22 Q. Do you know where his office is located, or was back in  
23 February 2014?

24 A. I think in Springfield.

25 Q. Do you have any reason to believe you didn't receive this

1 letter?

2 A. No.

3 Q. Is this the kind of communication that you might get on  
4 Illinois Department of Corrections letterhead from someone in  
5 the Investigations Unit? Is that something that happened as  
6 part of your job as warden at Menard from time to time?

7 A. Yes.

8 Q. And in those instances that you would receive those  
9 letters, would they come to you for review?

10 A. It would depend on the nature of the letter.

11 Q. Okay. I'm going to zoom in here again just in case you  
12 are having difficulty seeing.

13           You received a letter on February 19, 2014, alerting  
14 you that Mr. Plunk or someone in his office had received a  
15 letter from Mr. Clayborn Smith that was being sent to you for  
16 review and disposition, correct?

17 A. Correct.

18 Q. What did you understand it to mean, *disposition*?

19 A. Again, I would have to see the letter that he sent to me  
20 before I could tell you exactly what the disposition would  
21 have been.

22 Q. Okay. Well, did -- And you see that in this letter here  
23 there is a remark that there's an attachment? Do you see  
24 that?

25 A. Yes.

1 Q. Okay. Do you know whether or not you received the letter?

2 A. I don't remember.

3 Q. Is it your expectation that you would have received the  
4 letter with this -- with this letter to you from Mr. Plunk?

5 A. Yes.

6 Q. Okay. And would you -- And, if that letter had come to  
7 you would you have read that letter?

8 A. Yes.

9 Q. If you would, take a minute and read the first two  
10 paragraphs of this letter. Let me know whether that refreshes  
11 your recollection to receiving a letter like this on or about  
12 February 19, 2014.

13 A. Again, I don't remember receiving this.

14 Q. Is this the kind of letter you would receive from time to  
15 time as part of your job of warden at Menard?

16 A. It could be, yes.

17 Q. Can you tell me -- Well, this is a letter that alleges  
18 there was excessive force used by officers at Menard, right?

19 A. Correct.

20 Q. So, if you had read this letter back on February 19, 2014,  
21 and received this letter from Randy Plunk attached to it, can  
22 you tell me what as part of your general practice you would  
23 have done with this letter and with Mr. Plunk's request to  
24 review and decide about the letter?

25 A. I would have forwarded it to Menard Internal Affairs.

1 Q. What would be the reason you would have forwarded it to  
2 Menard Internal Affairs?

3 A. Because they do investigations on allegations of staff  
4 misconduct.

5 Q. Okay.

6 MS. GRADY: Your Honor, at this time we would move  
7 that Plaintiff's Exhibit 8 be admitted into evidence, pages 1  
8 through 5.

9 THE COURT: Are there other pages, or is that 1  
10 through 5 the whole exhibit?

11 MS. GRADY: No, there are additional pages, and we  
12 wouldn't be moving for those pages at that time.

13 THE COURT: So, pages 1 through 5, Exhibit 8. Any  
14 objection?

15 MR. TYRRELL: No objection, Your Honor.

16 THE COURT: Okay. 8 will be admitted.

17 MS. GRADY: Can we publish to the jury?

18 THE COURT: You may.

19 Q. (By Ms. Grady) So, I just want to understand how the mail  
20 process works here. You say you don't recall receiving this  
21 letter on February 19, 2014, but if this was sent to you  
22 around then how would it typically come to you or your office?  
23 Would it be mailed snail mail, e-mail?

24 A. It could be faxed, e-mail, snail mail.

25 Q. Okay. Something you would expect to receive in a few

1 days?

2 A. Yes.

3 Q. And you would have -- As you said, you would have reviewed  
4 the letter that came attached to it?

5 A. Yes.

6 Q. And any instance of excessive force, it's your testimony  
7 you would refer that to Internal Affairs for investigation?

8 A. Correct.

9 Q. Was it your expectation when you referred this to Internal  
10 Affairs that they would review all of the relevant people  
11 involved, --

12 A. Yes.

13 Q. -- including the prisoners alleging that the force was  
14 used upon them?

15 A. Yes.

16 Q. I don't have anything further.

17 THE COURT: All right. Do you have any questions of  
18 Mr. Harrington, Mr. Tyrrell or Mr. Bracey?

19 MR. TYRRELL: I have no questions. Thank you, Your  
20 Honor.

21 THE COURT: All right. You may step down.

22 MR. HARRINGTON: Thank you.

23 THE COURT: Now, did you say you have some --

24 MS. GRADY: Yes, Plaintiff's next witness, which will  
25 be very brief, will be presented by deposition testimony. It

1 will be presented by Lieutenant Kevin Reichert.

2 THE COURT: Have you all agreed on these?

3 MS. GRADY: Yes, we conferred this morning. We don't  
4 have any disagreement on the designation.

5 THE COURT: Okay. Are you going to put someone in to  
6 read the lines?

7 Okay. So, ladies and gentlemen, a deposition is  
8 testimony someone gave under oath just like here, but at a  
9 different time previously, and so that can be read into the  
10 record.

11 So, what we will do to make it easier for you is we  
12 will -- I will have her read questions, just like they were  
13 asking questions, and the paralegal is going to fill in as if  
14 she was the witness.

15 What's the witness's name again?

16 MS. CROSLEY: Kevin Reichert, R-E-I-C-H-E-R-T.

17 THE COURT: Okay. You may proceed.

18 (Deposition testimony of Kevin Reichert read to the  
19 jury).

20 THE COURT: So, now we have our witness by video.

21 Deana, do you need Brian?

22 THE CLERK: It will take him just a few minutes.

23 THE COURT: Ladies and gentlemen, if you want to  
24 stand up and stretch or something, it will take a few minutes  
25 to get the call connected.

1           Again, I will remind you that this witness is being  
2   presented by video, but you give it the same consideration  
3   that you would as if he was sitting right here. And just let  
4   me know if you have any problems hearing or seeing or  
5   anything, but normally it works very well.

6           (Brief interruption in proceedings).

7           THE CLERK: Good afternoon, Mr. Smith.

8           MR. SMITH: Yes.

9           THE CLERK: Can you hear me on your end?

10          MR. SMITH: Yes, I can.

11          I can't testify with the handcuffs on. Do I need the  
12   handcuffs?

13          MS. GRADY: Mr. Smith -- I think he will need the  
14   handcuffs off. Part of our exam is asking him to demonstrate  
15   things.

16          THE COURT: Okay. I would ask that Mr. Smith's  
17   handcuffs be taken off so that he can demonstrate -- use his  
18   hands to demonstrate.

19          Is there someone there that can do that?

20          MR. SMITH: He is talking to the Sergeant right now  
21   in the other room.

22          THE COURT: Can they hear me?

23          MR. SMITH: Yes, they can hear you.

24          THE COURT: Are they getting someone else?

25          MS. GRADY: Your Honor, I'm not sure. Maybe we can



1 take a short break.

2 THE COURT: Yes, let's take a break, ladies and  
3 gentlemen, and we can figure this out. Just a short break,  
4 and we will let you know when we are ready.

5 All rise for the jury.

6 (Jury out.)

7 THE COURT: Be seated, everyone.

8 MS. GRADY: Mr. Smith, I apologize. I'm going to  
9 have to talk to the Court for a minute and then I will be back  
10 with you in a minute, okay?

11 THE CLERK: We can mute it if you don't want him to  
12 hear.

13 MS. GRADY: I don't mind him hearing. Your Honor, at  
14 this point I think we have to file a motion -- since our  
15 Motion for Continuance was denied, at this point we will have  
16 to file a motion for a mistrial. Mr. Smith appeared to the  
17 jury shackled and, you know, not -- I think no one at the  
18 facility was prepared for him to be appearing in front of a  
19 jury. There was a correctional officer directly in view  
20 behind him. He wasn't able to testify and, you know, a large  
21 part of my exam is asking him to talk about what he saw. And  
22 he needs to use his hands, and I appreciate Your Honor's  
23 direction he be able to use his hands to do that, but I think  
24 given his appearance to the jury, at this time I have to ask  
25 for a mistrial again given the central role that he plays in

1 the story as the Court has already seen through our openings  
2 and through Mr. Nicolas's testimony.

3 THE COURT: Okay; all right. That motion will be  
4 denied. They weren't quite ready for us when we called in.

5 But, Mr. Smith, are your hands free now? I think I  
6 saw them take the handcuffs off.

7 MR. SMITH: Yes.

8 THE COURT: Okay. So, we can see him. Is there any  
9 way that we can move in a little closer with a camera or  
10 center him more on that end?

11 COURTROOM IT: They would have to use their remote.  
12 One of their -- And I don't know if they are capable of doing  
13 that.

14 THE COURT: He got up and moved.

15 Now we can't see you as well, Mr. Smith.

16 MS. GRADY: Mr. Smith, is it possible just for you to  
17 move a little to your left? Where you are standing right now  
18 is right in the middle of the camera.

19 That chair doesn't move, is that right?

20 MR. SMITH: That's right.

21 MS. GRADY: All right. There's an officer right  
22 behind you. Does the camera move? Maybe the officer could  
23 sort of direct the camera a bit.

24 MR. SMITH: I'm going to find out. I will ask him.

25 THE COURT: At the end of the day they are going to

1 know that he's incarcerated, and so I don't think there's any  
2 harm. Now he's going to be able to use his hands and  
3 demonstrate what he needs to demonstrate. I just want to make  
4 sure that we can see him a little better, if that's possible.

5 MS. CROSLEY: Or we can pull up a chair. I know they  
6 have them.

7 THE COURT: Yeah, maybe they can pull in another  
8 chair, Mr. Smith.

9 MR. SMITH: That's exactly what they are going to do.  
10 They are going to see about one right now.

11 THE COURT: Okay. So, again, as I was saying, I  
12 don't think there's any harm here. They are going to know  
13 that Mr. Smith is incarcerated and he is going to now -- We  
14 have a new chair. He's going to be able to testify. And,  
15 again, we tried, there was just many practical difficulties  
16 with getting him all the way here for trial, and we tried up  
17 until all day yesterday and this morning, and this is the best  
18 way for us to proceed with the trial.

19 So, that's great now. We can see you well, Mr.  
20 Smith. If at any point you have any difficulty hearing us,  
21 just raise your hand and let me know, okay?

22 MR. SMITH: Yes.

23 MS. GRADY: Mr. Smith, if I could just ask before the  
24 jury gets brought in, we arranged for you to have some  
25 documents. Is there any way you have those documents?

1 Oh, okay. Great.

2 THE COURT: Okay. Well, have those ready to go, and  
3 we are ready to go get the jury.

4 (Jury in).

5 THE COURT: Be seated, everyone. We have got  
6 everything taken care of here now.

7 Mr. Smith, please raise your right hand and take an  
8 oath to tell the truth.

9 (Plaintiff witness, Clayborn Smith, sworn).

10 THE CLERK: Please state your name for the record,  
11 please.

12 MR. SMITH: Clayborn Smith.

13

14 DIRECT EXAMINATION

15 BY MS. GRADY:

16 Q. Good afternoon, Mr. Smith. Can you tell the jury where  
17 you are from?

18 A. Chicago, Illinois.

19 Q. And can you tell us where you are at right now as you are  
20 testifying here remotely in this courtroom?

21 A. Cook County, Chicago.

22 Q. We are here to talk about what happened on February 5,  
23 2014.

24 Can you tell me where you were at that time?

25 A. Menard Correctional Center.

1 Q. And you were at Menard because you had been convicted of a  
2 felony, right?

3 A. Yes.

4 Q. How long have you been at Cook County jail?

5 A. Since October of last year, 2017.

6 Q. Let's turn back, if we can, to February 2014. Can you  
7 tell me how long -- Strike that.

8 Can you tell me where you were housed in that time,  
9 the winter of 2014, at Menard?

10 A. I was housed in the West house on 2 Gallery.

11 Q. Can you explain for the jury -- I apologize if you can't  
12 see, but they are just to my left.

13 Can you explain to them what is West house and how is  
14 Menard set up, if you know?

15 A. The cell house has got like maybe five galleries stacked  
16 on top of each other, maybe 25 cells per gallery. It's a  
17 building. I don't know how else to describe it.

18 Q. Okay. Well, let's just focus on West house. Is West  
19 house divided into two different sides?

20 A. Oh, yes, it's odd/even side.

21 Q. And you said that you were on 2 Gallery. Can I tell from  
22 that whether you were on the even side or the odd side?

23 A. That would be the even side.

24 Q. Okay. Where on the stack on top of each other is 2  
25 Gallery?

1 A. 2 Gallery is on the floor level. I was in like 3 cell,  
2 so -- and I already got on top of 2 Gallery.

3 Q. So, you're first floor on the even side, is that right?

4 A. Yes.

5 Q. And is that where you were housed in February 2014?

6 A. Yes.

7 Q. Can you tell me, do the prisoners who are housed on the  
8 even side have yard with the prisoners who are housed on the  
9 odd side?

10 A. No.

11 Q. And just so we are clear, can you explain to the jury what  
12 it means to have yard?

13 A. Yeah, you get out -- I think at that time we was getting  
14 out like an hour or so, like two days a week; a couple of  
15 hours, two days a week. I can't remember, because the hours  
16 had changed while I was there. But, you get out, you go out  
17 the west side of the building, across from the West house, so  
18 to speak, and it would be like on the yard. Basically the  
19 West house, you all was in the back of the prison, I would  
20 say, so it wasn't nowhere where you could see anybody or any  
21 other cell house or anything like that while I was there  
22 unit-wise.

23 Q. And what about lunch? Did the guys on even side eat lunch  
24 with the guys on the odd side? Did they have lunch at the  
25 same time?

1 A. No.

2 Q. All right. You just recently drew a layout of the  
3 entrance to the even side of West house at Menard, correct?

4 A. Yes.

5 Q. And I'm going to ask you to open those papers that have  
6 been sent to you.

7 A. Okay.

8 Q. One of them is marked as Plaintiff's Exhibit 29. Do you  
9 see that?

10 A. Yes.

11 Q. That's a drawing that you did?

12 A. Yes.

13 Q. Is this a fair and accurate depiction of how the entrance  
14 to the even side at West house looked in February of 2014?

15 A. Yes.

16 Q. Okay.

17 MS. GRADY: And, Your Honor, for the record, I will  
18 just state that the paper copy that Mr. Smith has in front of  
19 him is the same as what I would like to ask permission to show  
20 the jury, I believe without objection.

21 THE COURT: Okay. Does that have an exhibit number?

22 MS. GRADY: It has an exhibit number, but not on the  
23 demonstrative form.

24 THE COURT: Okay.

25 MS. GRADY: It is Plaintiff's Exhibit 29.

1 THE COURT: Okay.

2 MS. GRADY: I can move it closer to the jury, if I  
3 may publish.

4 THE COURT: Yes, you may.

5 No objection?

6 MR. TYRRELL: Correct, Your Honor. No objection.

7 THE COURT: So, ladies and gentlemen, this is what we  
8 call a demonstrative aid. It's just a diagram to help explain  
9 something to you, and I will instruct you on this later.

10 Q. (By Ms. Grady) Okay. Mr. Smith, can you hear me when I am  
11 away from the microphone, or no?

12 A. Yes, I can hear you.

13 Q. Okay. So, I understand it's going to be a little  
14 difficult for us to talk if we are not looking at the exact  
15 same physical thing, but I'm going to try and walk us through  
16 so you can explain for the jury the drawing that you made  
17 depicting the entrance to the even side of the West cell house  
18 as it looked in February of 2014, okay?

19 A. Yes.

20 Q. So, it's going to be most helpful for you to have it right  
21 in front of you, I think.

22 Okay. So, here -- As you are oriented and you look  
23 at the exit on the very bottom, so you turn it to this exit  
24 that is at the bottom, can you do that for me?

25 A. Yes.



1 Q. And can you tell me where -- where that exit is coming  
2 from? What does that door lead to?

3 A. That door leads to the outside of the building.

4 Q. Okay. And immediately to the left you have got about five  
5 boxes encapsulated in a pretty large rectangle. Can you tell  
6 me what that depicts?

7 A. Those are cell boxes that you put grievances in, sick  
8 call --

9 Q. Can you just repeat that answer, Mr. Smith, for us?

10 A. It's like a mailboxes.

11 Q. Okay. Those are mailboxes where prisoners can place  
12 different types of requests to different offices within the  
13 prison?

14 A. Yes.

15 Q. Okay. And over immediately to the right of the exit you  
16 have got this thing with two stick figures in it, and it's got  
17 the word written *door*. Do you see what I am talking about?

18 A. Yes.

19 Q. Can you tell me what's depicted there?

20 A. That's a cage area, a holding cage area. There's a shelf  
21 in there where officers stack your mail and organize the mail,  
22 things of that nature.

23 Q. Okay. And what about that -- What about this larger area  
24 here where these two stick figures are in? Is that a holding  
25 cell?

1 A. Yes, it's more like a cage. It's a holding cell.

2 Q. Okay. And you have got lines drawn here, but can you tell  
3 me, are those actual walls or is that something else?

4 A. That whole entire front from the exit until the -- into  
5 around like where I write *cell*, they go toward this way,  
6 that's all cages. That's one solid bar. You can see through  
7 it, it's not a solid wall.

8 Q. So, those are bars like you would have on your cell,  
9 right?

10 A. Yes.

11 Q. Up and down, sort of vertical bars, correct?

12 A. Yes.

13 Q. Okay. And then you have got this long rectangle here in  
14 which you have written the word *sergeant*?

15 A. Yes.

16 Q. Can you tell me what's depicted there?

17 A. That is a sergeant's cage. That's where the sergeant, the  
18 officers have property. Whatever cells we have, the officers  
19 can see inside, but I have never been inside to see everything  
20 that's in there. But, it sees from the even side to the odd  
21 side.

22 Q. Okay. That's a place where correctional officers go.  
23 That's not a place where prisoners go, is that right?

24 A. That's correct.

25 Q. All right. And then you have got *stairwell* depicted here.

1 Do you see where I am talking about?

2 A. Yes.

3 Q. Okay. Where does that stairwell go, if you know?

4 A. That would go up to 4 Gallery, 6 Gallery, 8 Gallery, and  
5 10 Gallery.

6 Q. And is that why it's referred to as the even side, because  
7 the galleries each have even numbers?

8 A. Yes.

9 Q. And you have some cells drawn here. Do you see that cell  
10 1, cell 2, Smith cell 3? Do you see where you have written  
11 that down?

12 A. Yes.

13 Q. I think -- I believe you testified earlier that there  
14 are -- Are there more cells than just those three cells?

15 A. Yes, the gallery, when you see in, like maybe 20, 20-some  
16 cells.

17 Q. Okay. So, those aren't depicted here, right?

18 A. No.

19 Q. But you've drawn a space for your cell, is that true?

20 A. Yes.

21 Q. And can you tell me in the front of your cell, again, is  
22 that walls or is that something else?

23 A. That's bars. Bars.

24 Q. Okay. And, again, down at the bottom here there's this --  
25 Is this -- Can you tell me what you have written here? I

1 think it's a shower door.

2 A. Yes.

3 Q. Can you tell me what that depicts?

4 A. That's the entrance for the shower.

5 Q. Okay. So, as you were in your cell you can -- standing in  
6 your cell you can see out in front of you, is that true?

7 A. Yes.

8 Q. Can you also tell me what you can see from your cell, the  
9 cell that you had on February 5, 2014?

10 A. I could see where six people are standing and I could see  
11 to the exit door.

12 Q. Okay. So, you can see all the way to the exit here, and  
13 can you see that just looking out of your cell?

14 A. Yeah, I can look out my cell and see most of this. I can  
15 see to the corner of the cage, I can see to the wall on the  
16 side of the door, the exit door. If I stick my mirror out I  
17 can see just a little bit past the point of the shower here,  
18 just a little bit.

19 Q. Okay. You used a phrase I don't think that we are  
20 familiar with, *if you stick your mirror out*. So, can you tell  
21 me what mirror you are referring to?

22 A. Most of the time when you go and look from whatever angle  
23 that you can see further down, left or right, you stand in  
24 front of the bar, put your mirror out and you can look down.

25 Q. Okay. So, you stand at the front of the bars, and then

1 does your hand go through the bars or does it stay behind the  
2 bars?

3 A. No, it goes through the bars.

4 Q. Okay. Sorry, go ahead.

5 A. You put it out, but you can extend it out where you put  
6 your hand on the outside of the bars to use the mirror to see  
7 down the gallery way.

8 Q. And you're saying that using the mirror will give you a  
9 different angle of sight, depending on how far you stick your  
10 hands out, is that right?

11 A. Yes.

12 Q. Okay. And can you tell me where -- How did you get that  
13 mirror?

14 A. I purchased it from the commissary.

15 Q. And can you just explain to the jury what a commissary is?

16 A. The commissary is where you go to buy necessities,  
17 correspondence materials, underclothes, and I guess basically  
18 whatever you are allowed to have in the prison that they allow  
19 you to have.

20 Q. Okay. I want to draw one more thing to your attention  
21 here on your drawing. You have a line written here, *odd side*  
22 and *even side*. Is that bars or is that walls?

23 A. No, that's, I would say, a ceiling or a metal wall that  
24 has a door.

25 Q. And do you know if that door is typically kept open or

1 closed?

2 A. No, the door is -- Well, it's open at times, but during  
3 this time it's always closed.

4 Q. Okay. I want to talk to you specifically about the events  
5 that happened on February 5, 2014.

6 Do you remember seeing two prisoners in the holding  
7 cell that morning?

8 A. Yes.

9 Q. Did you know who they were?

10 A. Two Spanish guys. I didn't know them.

11 Q. When you say *Spanish guys*, do you mean people who were  
12 Hispanic or appeared to be Hispanic to you?

13 A. They appeared to be black Latin, Latino.

14 Q. Had you ever seen them before February 5, 2014?

15 A. No.

16 Q. Did you know their names?

17 A. No, I didn't. If I had seen them before I wouldn't know,  
18 because I didn't know their names. I didn't know the guys.

19 Q. Can you tell me what you remember happening on February 5,  
20 2014?

21 A. Say that again, please.

22 Q. Sure. Can you tell me what you remember?

23 A. They are doing a lot of noise back behind me.

24 Q. Okay. And, please, do just let me know if there's an  
25 issue with hearing me.

1           Can you tell me what you remember happening on  
2 February 5, 2014?

3 A. Yeah, the line was coming down the stairwell exiting the  
4 door. Guys were leaving lunch and guys was in the cage,  
5 exchanging in small comments, and they was walking out the  
6 door. I was sitting in my cell, but I was trying to catch  
7 somebody going out the cell to tell them something that was on  
8 the high gallery. They was exiting the door. When they was  
9 exiting the door at the end of the line I heard somebody say,  
10 "Shut your pussy asses up," or something like that. And then  
11 I heard Qualls -- Qualls was standing -- coming this way. I  
12 heard him say, "Oh, he's about to get hurt." And he walked  
13 over to the cage and asked the guys to turn around and cuff  
14 up, and then they opened the door and snatched one of them out  
15 of there by the neck, basically, and had the guy almost like  
16 towards this corner of the side cage and he punched him. And  
17 he told the other guy -- If my memory serves me correctly, he  
18 said, "Face the God-damned wall, face the God-damned wall."  
19 He kept repeating. And he had these other two officers come  
20 in, and they grabbed him through the main cage, walked him up  
21 to the wall and standing there pushing his head into the wall.  
22 As this was going on, the officers who were outside to watch  
23 the line seen what happened, came in, and basically Qualls  
24 took big guy on in -- took big guy into the shower. That's  
25 what I heard. I heard the shower door open and I heard

1 yelling, I heard what sounded like punching. I didn't see  
2 anything. I heard what sounded like punching, I heard the guy  
3 yelling. Like it was the last person like following, he got  
4 out of my view, you know, and I was told to put my mirror in.  
5 They pulled the guy out, jacked up. His hands was already  
6 behind his back. They had him jacked up like this. I can't  
7 recall -- I can't remember exactly who was holding the man up,  
8 running him out the door, like that.

9 Q. Thank you, Mr. Smith. We went through a lot, but I want  
10 to break that down a little bit.

11 I think the first thing that you testified about was  
12 seeing a line of guys going to lunch, is that correct?

13 A. Yeah.

14 Q. And in prison can you go to lunch when you want to?

15 A. No.

16 Q. Tell me how it works.

17 A. Gallery to gallery. Take one gallery in, take the gallery  
18 out. Depends on how many in the chow hall. Sometimes you can  
19 go into more than one chow hall; take a gallery in and take a  
20 gallery out. The officers come up, sometimes they announce  
21 chow, you know, guys come out, close the door, and the line  
22 proceeds down the stairwell off the gallery, out the cell  
23 house.

24 Q. Did you go to chow that day?

25 A. No.



1 Q. Why not?

2 A. I normally don't go to chow. You have to put up with too  
3 much stuff to go to chow. I didn't go. I didn't go.

4 Q. Sorry. Was the chow line coming down the stairs or were  
5 they coming from the first floor?

6 A. The chow line was entering the door when he was coming  
7 down the stairs.

8 Q. What time do officers typically start taking the galleries  
9 for lunch on the even side of the West cell house?

10 A. They don't do it every day start at one place. They start  
11 on even or odd side, depending on what's going on. 9, 9:30,  
12 something like that.

13 Q. And I think you testified that you were paying attention  
14 to the line movement. Can you tell us where within your cell  
15 you were located as the line was moving from the upper gallery  
16 out to lunch?

17 A. I was standing at the bars with my mirror out waiting on  
18 somebody -- see if somebody was going to come down that I was  
19 looking for.

20 Q. Okay. So, you were near -- you were near the front of the  
21 bars?

22 A. Yes.

23 Q. And you had your mirror out as the line was moving  
24 already, is that correct?

25 A. Yes.

1 Q. And, at the time your mirror was out where were you trying  
2 to point your mirror? What were you trying to see right at  
3 the very beginning?

4 A. I was looking for a guy entering the cell, coming through  
5 the -- coming out the door, through the cell. I was trying to  
6 catch somebody.

7 Q. Okay. Now, you said that you heard some people talking.  
8 Right at that point as you were looking for a particular  
9 person as the line's moving to chow, did you hear exactly who  
10 was saying what to whom?

11 A. Everybody was talking. Guys that was in the line was  
12 talking to each other, and as they walked by guys in the cages  
13 was talking to people. It wasn't like a conversation, it was  
14 more like a comedy, because the line was constantly moving.

15 Q. And you said at some point a person said words to the  
16 effect of, "Shut your pussy ass up," is that correct?

17 A. That was at, like, the last couple of guys that was  
18 walking out the door.

19 Q. When you say the last couple of guys were walking out the  
20 door, you mean the last couple of prisoners in that line going  
21 to chow were on their way out, is that correct?

22 A. Yeah, most of the line had exited already.

23 Q. And do you know who said that line or words to that  
24 effect?

25 A. No.

1 Q. Do you know whether it was an officer or a prisoner or  
2 anybody else?

3 A. I can only assume it was the officers. I didn't see them  
4 say it.

5 Q. Okay. Tell me what was the next thing that you did  
6 actually see.

7 A. I saw Qualls saying something to the effect, "Don't worry  
8 about it."

9 Q. Can you please repeat for us?

10 A. I saw Sergeant Qualls walking towards the cage door.

11 Q. Okay. And can you describe what Sergeant Qualls looks  
12 like for the jury, please?

13 A. Yeah, about this tall, kind of -- I would say he got some  
14 weight, kind of husky, chubby, wear like a crewcut hairstyle,  
15 sort of like that, a mustache. I didn't ever see him wear  
16 glasses, you know.

17 Q. And what's his race, if you know?

18 A. He's a white male.

19 Q. Okay. So, you saw him approach the holding cell. And  
20 could you see that -- Did you require use of your mirror in  
21 order to see Sergeant Qualls, or could you see it from your  
22 cell without using your mirror?

23 A. Well, I likely could have seen him without the mirror, but  
24 I had the mirror out.

25 Q. Okay. And, as you sit here today do you recall whether

1 that prisoner that you saw get pulled out of his cell was  
2 handcuffed or not handcuffed?

3 A. Well, if my memory serves me correctly he was definitely  
4 handcuffed.

5 Q. So, tell me what happens next after Mr. Nicolas -- I'm  
6 sorry -- after the prisoner is taken out of his cell. And,  
7 again, just to clarify you didn't know that prisoner's name at  
8 the time he got pulled out of the cell, right?

9 A. If they was standing right here in this room I wouldn't  
10 know them.

11 Q. Okay. But, you do recall seeing the -- I believe you  
12 described him as a Latino prisoner being pulled out of the  
13 cell on that day, right?

14 A. Yes.

15 Q. Okay. Can you tell me what's the next thing that you  
16 remember?

17 A. Qualls punched him.

18 Q. Where was he standing when Qualls punched him?

19 A. He was standing in front of Qualls.

20 Q. Can you tell me where in relation --

21 A. Towards like the corner -- Towards like the corner of the  
22 sergeant cage.

23 Q. Did you say the corner of the sergeant cage?

24 A. Yes, around that area. This is not a very -- It's not a  
25 very large area, so it's maybe -- maybe seven -- maybe seven

1 feet or five feet. Maybe seven feet in length. I don't know.  
2 It's not a very large area.

3 Q. It's your testimony it's about seven feet from the door of  
4 the holding cell or the holding cage to the corner of the  
5 sergeant's cage?

6 A. I'm saying that from the cell there's bars separating the  
7 sergeant's cage and the stairwell. It's like that's the width  
8 of it, from the stairwell to that corner, maybe seven feet,  
9 probably. Maybe seven feet.

10 Q. Okay. Is there anything -- I'm sorry, Mr. Smith. That  
11 was my mistake. Can you please repeat the last thing you  
12 said?

13 A. Somebody is talking in here. I can't hear you, because  
14 somebody else is talking.

15 Q. Mr. Smith, that's because we have --

16 THE COURT: We have an interpreter, so we will just  
17 have to deal with it.

18 Q. Okay. Well, we will do our best. And if you need me to  
19 repeat anything, please do let me know, okay?

20 A. Yes.

21 Q. Maybe this will be a little bit better, I'm sorry. I had  
22 the mic off.

23 Okay. So, I'm not sure I quite understand what your  
24 testimony was. You were talking about seven feet. Did you  
25 tell me it's seven feet from the stairwell to the outside of

1 the sergeant's corner cage?

2 A. Yeah, to the corner of the sergeant's cage, maybe seven  
3 feet. It's not that long.

4 Q. Okay. I'm going to write on here *seven feet* unless  
5 there's an objection.

6 MR. TYRRELL: No objection.

7 Q. Okay. And I believe you said that the punch that you saw  
8 was on the corner of the sergeant's cage closest to the exit,  
9 is that right?

10 A. The inmate was standing like close to the sergeant's cage,  
11 maybe a half a foot, where I could see him.

12 Q. And at that point could you see with the use of your  
13 mirror both Sergeant Qualls and the inmate?

14 A. Yes.

15 Q. And is there anything in the corner of this sergeant's  
16 cage that is right on the corner?

17 A. It had big orange water container.

18 Q. Is that like a circular Gatorade water-cooler-type thing?

19 A. Exactly.

20 Q. Okay. And, so, when you saw that punch can you tell me  
21 what you saw the inmate do in response?

22 A. I saw his reaction. I saw his reaction hunched like this.

23 Q. He doubled over?

24 A. Yes. He didn't kneel all the way down. I saw the  
25 reaction from him.

1 Q. And at that point did you see any officers -- any other  
2 officers get involved in any way?

3 A. Messing with this guy that Qualls had?

4 Q. Correct. After you saw that first punch, did you see any  
5 officers get involved with either Sergeant Qualls or with the  
6 inmate?

7 A. Well, as this whole thing was happening, officers were  
8 coming into the building. Every time a line goes out, they  
9 get to a certain point, they've got to come get them, remind  
10 them it was still cold outside. Because we have got the  
11 officers that are coming in and the officers going out. So, I  
12 didn't see no other officers. I saw this guy that Qualls had.

13 Q. What did you see Qualls do with the inmate?

14 A. He took him around to the shower.

15 Q. And you couldn't -- even with your mirror you couldn't see  
16 into the shower area, right?

17 A. Well, I can't see it, but whenever you open the shower  
18 door it makes a lot of noise.

19 Q. So, you could hear it, but even with your mirror you  
20 couldn't see it?

21 A. No, I couldn't see it, no.

22 Q. And could you see back into the corner closer where you  
23 have written even-side line and odd-side line? Could you see  
24 back there with your mirror?

25 A. I couldn't see nowhere in that area.

1 Q. Okay. But you testified that you heard something after  
2 Qualls and this inmate disappeared from view?

3 A. Yeah, I heard the shower door open, but then it got real  
4 squeaky and squeaky sounds. I heard the door open, and then I  
5 heard punches and I heard him holler.

6 Q. Okay. Let's take each of those. You described what the  
7 shower door sounded like. Can you tell me what you heard that  
8 led you to believe that there were punches?

9 A. Stuff like (indicating). Those are the type of sounds  
10 that I heard.

11 MS. GRADY: And, Your Honor, for the record, I will  
12 just note that the witness imitated the sound of a hit on his  
13 body.

14 THE COURT: Yes.

15 Q. (By Ms. Grady) And can you tell me what you heard that  
16 led you to the conclusion that there was yelling going on, or  
17 what exactly you heard being yelled, what type of sounds?

18 A. "Ahh, ahh, ahh." It was a lot of keys jingling, you know.  
19 I was seeing a lot of keys. I could hear the same thing. But  
20 I didn't hear no words. I didn't hear nobody say nothing in  
21 addition to that, like words, stuff like that. It was a lot  
22 of noise because the keys was jiggling.

23 Q. At this point when you were hearing these things did you  
24 see Qualls anywhere within your view separate from the inmate?

25 A. I want a second question.



1 Q. Sure. My question is you testified that Qualls took the  
2 inmate and then you heard these noises. Did Qualls come back  
3 into your view when you heard these noises going on?

4 A. I don't remember.

5 Q. Okay. Did anyone ever tell you to put your mirror away?

6 A. Yes.

7 Q. Who told you that?

8 A. Snell.

9 Q. And what did you do when he told you that?

10 A. I believe I -- I had my -- I had my hand extended out. I  
11 brought it in. I brought my arm in a little bit.

12 Q. And where was Snell when he told you to put your mirror  
13 away?

14 A. He was in the cage area right here. He had the other guy  
15 up against the wall, holding his head against the wall. He  
16 was looking at me, he told me to put the mirror in. He was  
17 also looking into the shower area, too.

18 Q. So, he could see you from that shower area, right, --

19 A. Yes.

20 Q. -- because you can see straight into that holding cell --  
21 I'm sorry. I misspoke.

22 He could see you from the holding cell, right?

23 A. Yes.

24 Q. Because you can see straight into that holding cell  
25 without the use of a mirror?

1 A. Yes.

2 Q. After the -- You testified that you saw Mr. Nicolas get  
3 taken out of the cell. Did you ever see him again?

4 A. Only when they took him out the door.

5 Q. You mean on that same day, February 5, 2014?

6 A. Yeah. I don't know. I don't know the guy.

7 Q. And did you see him around Menard at any day -- a date  
8 after that?

9 A. If I ever saw the dude again I wouldn't even know it was  
10 him. I never even knew the guy.

11 Q. Is there a segregation unit at Menard that you are  
12 familiar with?

13 A. Yes.

14 Q. Where --

15 A. North 2.

16 Q. And do prisoners from North 2 have lunch with prisoners  
17 from the West cell house?

18 A. They don't do anything with anybody in population.

19 Q. By *population*, you mean people not in segregation, right?

20 A. Yes.

21 Q. They don't have yard with prisoners from the West cell  
22 house, correct?

23 A. Correct.

24 Q. You say that you saw this beating happen on February 5,  
25 2014. Did you ever tell anybody about what you saw?

1 A. Yes, I did. I wrote people from the outside about it.

2 Q. When you say you wrote people on the outside about it, can  
3 you tell the jury what you mean by that?

4 A. I wrote the Investigations Unit, I wrote John Howard, I  
5 wrote another organization I usually write.

6 Q. Another organization you usually write? That's what you  
7 said?

8 A. Yes.

9 Q. Okay. And one of the people you wrote was the  
10 Investigative Unit?

11 A. In Springfield.

12 Q. And when did you write that letter?

13 A. I think that was the last that I wrote -- Can I look at  
14 this paper?

15 Q. Sure. Would it refresh your recollection to look at that  
16 -- a copy of that letter?

17 A. Yes.

18 Q. Okay. Then you can go ahead and pick up Plaintiff's  
19 Exhibit 3.

20 A. I wrote this February 9, 2014.

21 Q. You wrote that on February 9, 2014?

22 A. Yes.

23 Q. And can you tell me why you wrote this letter?

24 A. I wrote the letter because I was disturbed by what I saw  
25 and I didn't want them getting away with that. It was so --

1 It was shocking to see that a person would be punched and  
2 jumped on simply because he's talking, something that goes on  
3 every day, just saying, "What's up man," talking to guys that  
4 you would see every day. I was really disturbed about what I  
5 saw. This is unnecessary.

6 Q. And why did you, like, write the letter to Springfield  
7 instead of somewhere at Menard?

8 A. Because I wanted them to know my opinion, my experience.  
9 Ain't nobody at Menard going to do nothing about this. They  
10 wasn't going to investigate. I had no confidence that they  
11 would investigate it, and I thought like a lot of things that  
12 I have done, it would just get lost, it was never -- Actually,  
13 I thought that's what happened to this, because nobody talked  
14 to me about this.

15 Q. Can you tell me why it was that you waited for four days  
16 to write it?

17 A. Well, I had to get their names and stuff. I didn't know  
18 the guys. I had to get --

19 Q. And you got their -- Sorry. Go ahead, Mr. Smith.

20 A. I had to get their names. I didn't know them. I had to  
21 get somebody to find out who they were.

22 Q. And you wanted their names so that an investigation could  
23 be launched, right?

24 A. Exactly. That's why I wrote the Investigation Unit.

25 Q. And did you eventually get those names?

1 A. Yes, I did.

2 Q. Can you tell me generally how you got the names?

3 A. I had a guy, a buddy that worked there.

4 Q. Did you have any conversation with either of the two  
5 inmates that you saw involved in this altercation at any point  
6 between February 5, 2014 and February 9th, when you wrote this  
7 letter?

8 A. No.

9 Q. Did you have any conversation with those inmates at any  
10 point between February 9th, when you sent your letter, and  
11 today?

12 A. No.

13 Q. And did anybody from the Investigative Unit in Springfield  
14 or Menard or anywhere else ever come to talk to you about the  
15 beating that you described in your letter?

16 A. No.

17 MS. GRADY: Nothing further, Your Honor.

18 THE COURT: All right. Cross-examination?

19

20 CROSS EXAMINATION

21 BY MR. BRACEY:

22 Q. Good afternoon, Mr. Smith.

23 A. How are you doing?

24 Q. I have got some questions to follow up here just to clear  
25 some things up, okay?

1           Before we start, how many pieces of paper do you have  
2 in front of you right now?

3 A. Four.

4 Q. Okay. And that's the entirety of Plaintiff's Exhibit 3  
5 and your drawing, is that correct?

6 A. Yes.

7 Q. Okay. Earlier it appeared that you were looking down when  
8 answering some of your questions. Were you looking at that  
9 when you were looking down?

10 A. I was looking at this diagram.

11 Q. Okay. I believe you just testified that you obtained the  
12 names of Mr. Diaz and Jose-Nicolas, is that correct?

13 A. Yes.

14 Q. Okay. How did you get those names?

15 A. I had somebody at work get them for me.

16 Q. When you say *someone at work*, are you referring to someone  
17 that works for IDOC?

18 A. Yes.

19 Q. Who was that?

20 A. It was -- I don't want to tell you who it was. He was in  
21 prison.

22 Q. Are you saying that a prison correctional officer gave you  
23 those the names?

24 A. No, I am telling you that the inmate got the names for me.

25 Q. Okay. Which inmate was that?

1 MS. GRADY: Objection, Your Honor. Relevance.

2 A. I'm not going to tell you that. I don't believe that  
3 there's any relevance to the name of the prisoner.

4 THE COURT: Well, that will be sustained. And, for  
5 obvious reasons, he's not likely to tell you. So, go ahead.

6 Q. Okay. I believe during this time you said that you were  
7 on the 2 Gallery, cell 3.

8 A. I believe so, yes.

9 Q. Okay. Do you recall -- Is it correct that you were in  
10 that same cell from, roughly, July 2013 to February 2015?

11 A. Yes.

12 Q. You testified earlier regarding Plaintiff's Exhibit 3, the  
13 letter you wrote to I/A. In the first paragraph there, you  
14 have a sentence that says, "Greeting -- greeting and common  
15 small talk was exchanged by Diaz, Nicolas with other inmates  
16 exiting the door."

17 Was that true when you wrote that?

18 A. I don't know which one was who, but they both were  
19 talking.

20 Q. You could hear them talking?

21 A. Yeah, I could hear them talking. Everybody was talking.  
22 I could see them talking. A lot of people was talking, so I  
23 would assume that they were talking. But I could see them  
24 talking to people. I couldn't hear the exact words what was  
25 being said, but there was a lot of talking going on.

1 Q. So, I believe you just said you could not hear them  
2 because there was a lot of talking going on, is that correct?

3 A. I could see them talking, but I couldn't -- I wasn't  
4 really paying attention to them. I was looking for somebody  
5 that was coming down the stairs.

6 Q. Okay. I believe earlier you testified that on each  
7 gallery, like the 2 Gallery that your cell was on, I believe  
8 you said there's approximately 20 or so cells on that gallery,  
9 is that correct?

10 A. Yes.

11 Q. How many galleries are stacked on top of each other, so  
12 above your 2 Gallery?

13 A. Above mine, maybe four.

14 Q. So, that would be roughly 80 cells or so?

15 A. It's like 20, 25 cells on a gallery.

16 Q. Okay. So, is it noisy in the cell house?

17 A. It's noisy in the cell house, but not when the cell house  
18 is almost empty, each side. It's chow time. A lot of guys  
19 was out their cell, out of the building.

20 Q. Okay. Still looking at your letter, Plaintiff's Exhibit  
21 3, the letter you wrote to I/A. You say another officer that  
22 you couldn't tell yelled to Diaz and Nicolas to shut their  
23 pussy asses up, is that correct?

24 A. Yes.

25 Q. Okay. So, again, did you actually hear the statement?



1 A. Yes, I heard him say that.

2 Q. Okay. So, you next say you heard Sergeant Qualls tell the  
3 other officers or officer, "Don't worry about it, he's about  
4 to get hurt." Do you remember that?

5 A. Yes, I remember that.

6 Q. Was this in a raised voice, or just you and me speaking?

7 A. It wasn't in a raised voice, because the line was  
8 basically out the door at the time. That was at the end of  
9 the line. Both comments was at the end of the line, whoever  
10 it was that was telling them, "Shut your pussy ass's up," and  
11 Qualls's response to that.

12 Q. Okay. So, earlier you testified regarding the physical  
13 altercation allegations here, okay? So, who first brought  
14 Jose-Nicolas out of the holding cell?

15 A. I seen Qualls bring one of the guys out. I don't know  
16 who, which one of them it was.

17 Q. So, am I correct you just saw Qualls bring one of the two  
18 guys out, but you don't know which one?

19 A. Yeah, he would -- Qualls was the only one there. There  
20 were other officers coming in there at the time; however,  
21 Qualls told him to turn around, get cuffed up, or somebody  
22 cuffed him up, and Qualls was by the cage.

23 Q. And I believe you said he then took them in the range of  
24 five to seven feet to the corner by the edge of the sergeant's  
25 cage, is that correct?

1 A. Say that one more time, please.

2 Q. Okay. So, I believe you testified earlier that they then  
3 carried Jose-Nicolas roughly five to seven feet and punched  
4 him at the corner of the sergeant's cage, is that correct?

5 A. No, that's not -- No. Can I repeat this -- Can I grab  
6 this? It says right here he's in the door, directing him  
7 almost -- across from the side of the cage. He pulled him out  
8 of -- He pulled him out of the cage here, right -- Right here  
9 by the corner is where most everything happened. It wasn't no  
10 walking five or seven feet. I was saying it was the width of  
11 the side of the cage is like five or seven feet. That's what  
12 I was trying to explain.

13 Q. Okay. So, didn't you testify that you saw him -- that you  
14 saw Qualls punch Jose-Nicolas at the corner of the sergeant's  
15 cage?

16 A. Yes.

17 Q. Okay. Where did -- Where did that punch land?

18 A. His fingers landed in his mid section.

19 Q. And you saw this through your mirror?

20 A. Yes.

21 Q. Okay. I'm looking now at the second page of your letter  
22 to I/A. You say, "Qualls and others moved this inmate to the  
23 shower and apparently continued to assault and batter this  
24 inmate," okay?

25 A. Yes.

1 Q. So, am I correct that you said earlier that you could see  
2 all the way to the shower door from your cell?

3 A. No, sir.

4 Q. Okay. Well, then how would you know that Qualls and  
5 others moved the inmate to the shower?

6 A. Well, I saw Qualls being in the corner, past the  
7 sergeant's cage, with the inmate and the other officers. I  
8 only heard from that point. I couldn't see that far.

9 Q. How far away is the shower door from your cell?

10 A. That's maybe -- I have no idea, because you have to go  
11 toward the exit door maybe 20 -- maybe almost 20 feet, and  
12 then before exiting the door you have to make a right and it  
13 would be like maybe five feet from the exit door, maybe ten,  
14 five feet from the exit door. It's not that long. It's not a  
15 very large area. It's a small area.

16 Q. Okay. So, I believe you just said somewhere in the range  
17 of 25 to 30 feet, is that accurate?

18 A. Maybe 20 feet from my cell to almost the exit door and you  
19 make a right here. Maybe 25 feet. I am only estimating. I  
20 have no idea.

21 Q. Well, you do this demonstrative showing the layout and you  
22 testified earlier about the five to seven feet, so that's the  
23 only reason why I am asking.

24 So, you believe that you could clearly hear people  
25 kicking in the shower, is that correct?

1 A. I don't know what kind of strikes, kicks, punches, what  
2 they were. I heard the contact of it and I heard the man yell  
3 and I heard the key chain. I don't know what kind of -- I  
4 couldn't see. I don't know if it was a kick, a punch, you  
5 know, or what was going on.

6 Q. Well, how many contact sounds did you hear?

7 A. It's difficult to say, because I heard like maybe four or  
8 five punches before I heard him scream, and then keys and all  
9 of that stuff, so maybe three, four, five punches. I heard  
10 that for sure. I don't know those punches -- all of them were  
11 punches, rather. I don't know.

12 Q. Do you know who Officer Berry is?

13 A. I believe I do. Heavy-set individual.

14 Q. Was Officer Berry present during this interchange we are  
15 describing?

16 A. Which interchange?

17 Q. This event that we are discussing on February 5, 2014.

18 A. Okay. But you asked me did he go towards the shower, or  
19 what are you asking me?

20 Q. I am asking was he there? Was he at the holding cage  
21 during any of this portion?

22 A. Yes.

23 Q. Okay. Did he go to the shower area?

24 A. I don't recall him going to the shower area.

25 Q. Okay. Well, can you look at the second page of your

1 letter to I/A? At the beginning of the second paragraph you  
2 say, "C/O Snell and C/O Berry grabbed the other inmate in the  
3 cage and held him in the wall."

4 A. Yes.

5 Q. Then earlier on that same page you say Snell and Berry  
6 ordered you to put your mirror in the cell, is that correct?

7 A. Yes.

8 Q. Okay. So, is it your testimony that Snell and Berry, you  
9 never saw them go -- walk to the shower?

10 A. Yes, I don't remember Snell or Berry in the shower. I  
11 remember them doing what Qualls told them to do, and that's  
12 it.

13 Q. Do you remember?

14 A. They put their -- They had the dude like this  
15 (indicating). Snell had his head against the wall holding  
16 like this, and Berry had him like this, and both of them were  
17 looking this way towards the shower.

18 Q. And when you say -- That demonstration you just did, are  
19 you referring to the other inmate who was remaining in the  
20 holding cell?

21 A. Yes.

22 Q. Okay. Not the Plaintiff, Jose-Nicolas, correct?

23 A. Who?

24 Q. I said, just to clarify, you were not describing the  
25 Plaintiff, Mr. Jose-Nicolas, correct?

1 A. I don't know which one is which, sir, but whoever was in  
2 the shower, I'm not talking about him. I am only talking  
3 about the guy that was in the cage.

4 Q. Okay, thank you. That clarifies.

5 Do you recall the total number of officers that were  
6 present during the first punch by the sergeant's cage?

7 A. Total number would be difficult to say, because they was  
8 coming through the door as the event was unfolding. So, if  
9 you are talking about maybe Berry and Qualls, yes, who came  
10 through the door first and arranged, only thing I know their  
11 names. I didn't know how many people was in there at the  
12 exact time of the punch, though, because there was all this  
13 yelling. I was watching what was going on. I really wasn't  
14 standing -- I didn't even expect that to happen, man. I  
15 wasn't, you know, paying attention to who exactly was coming  
16 through the door at that time.

17 Q. Well, I believe you said earlier that all the lines had  
18 already left at this point, right?

19 A. Yes.

20 Q. So, who would have been coming and going that would have  
21 confused you about who all was there?

22 A. I wasn't confused about who all was there. You asked me a  
23 second question, and I'm telling you that I don't know the  
24 exact number of officers because they were coming into the  
25 door. Berry and Snell and Qualls was already in the area,

1     okay? When the incident was going on, when this guy was  
2     getting punched, I was not -- First of all, I would have to be  
3     seeing past him. It's a very narrow area coming through the  
4     door. It's not like you walk straight out to the door. It's  
5     a small little tunnel, so to speak, like three feet in the  
6     entrance of the door. So, it's not like you just walk out the  
7     door and you are outside. You have to walk a couple more  
8     steps. But, I don't know the exact number of officers, no. I  
9     don't even know who all the officers were. I only named the  
10    officers that I knew were present. I don't know all the  
11    officers' names.

12   Q. Okay. I'm looking at the diagram you sketched for us.  
13   Can you take a look at that for a second?

14             In the area where you drew the two stick figures, I  
15   believe earlier you said that represents the holding cage,  
16   correct?

17   A. Yes.

18   Q. Okay. Then do you see where you've drawn the stairwell  
19   and the sergeant's cage connect?

20   A. Okay, yes.

21   Q. Okay. Is there a door that connects that corner to the  
22   holding cage area?

23   A. Say it one more time, because I didn't understand what you  
24   asked.

25   Q. Sure. Is there a door that connects the corner of the

1 holding cage area to the area where the sergeant's cage and  
2 the stairwell meet?

3 A. This door -- This line right here represents the  
4 stairwell. It connects to this. I didn't know that this was  
5 going to be in court or nothing like this. This is not a  
6 perfect thing. But, there is a door -- There's a door there  
7 that divides from entering onto the gallery, yes. That door  
8 is connected to here and here.

9 Q. Do you know if that door remains closed unless line  
10 movement is going to or from?

11 A. Yes.

12 Q. Is that yes, the door does remain closed?

13 A. If there's not any line movement during chow, even on 2  
14 Gallery that is not a door, it's a cage. It's closed --

15 Q. Okay.

16 A. -- and has bars.

17 Q. And I believe you said earlier that by the time you said  
18 you saw the punch thrown the lines were already done, correct?

19 A. Yes.

20 Q. Was there anyone else besides the guys that you described  
21 as the two Latin guys? Was there anyone else other than them  
22 in the holding cell?

23 A. No, not to my recollection.

24 Q. When you used your mirror to see in that direction, did  
25 you have it connected to a pole or anything, or was it just in



1 your hand?

2 A. Just in my hand.

3 Q. How long is that mirror?

4 A. Maybe about the length of my hand and maybe about the  
5 width of it.

6 Q. Did you ever have an occasion to visit the Healthcare Unit  
7 when you were on the West house 2 Gallery?

8 A. Where? Outside the building or inside?

9 Q. Let me withdraw that question.

10 There were some questions earlier about whether the  
11 odd and even sides of the West house ever had any occasion to  
12 interact, okay? And I believe you testified that they don't  
13 have lunch or yard at the same time, is that correct?

14 A. Okay.

15 Q. Is that a correct statement of your testimony?

16 A. Yes, it is.

17 Q. Okay. Are there any occasions where the odd and even  
18 sides both go to Healthcare at the same time?

19 A. Yes, they can go to Healthcare at the same time, yes.

20 Q. Okay. So, they do interact during those types of visits,  
21 correct?

22 A. Yeah, if you get a call pass to go to the Healthcare,  
23 somebody else on the other side gets a call pass to go to  
24 Healthcare.

25 Q. Thank you, Mr. Smith. I have no further questions.

1 THE COURT: All right. Any brief redirect?

2 MS. GRADY: Brief; very brief.

3

4 REDIRECT EXAMINATION

5 BY MS. GRADY:

6 Q. Mr. Smith, you were just asked some questions about going  
7 to Healthcare, getting a healthcare pass.

8 Just to clarify, did you ever go to Healthcare with  
9 either of the two inmates you saw in the holding cell on  
10 February 5, 2014?

11 A. I have no idea, because I don't know these guys. I have  
12 been telling you I don't know these brothers.

13 Q. You were asked several questions about your hearing. The  
14 walls -- Are the walls concrete in the prison?

15 A. What do you mean *are the walls concrete in prison*? I  
16 don't understand your question.

17 Q. Can you tell me what makes up the walls? What kind of  
18 walls are they?

19 A. It's all bars. There are -- I guess you could call -- The  
20 rearview wall's like this. Everything inside is basically  
21 cage. Everything inside the cage is bars.

22 Q. Do you hear a lot of echoes through the cell house?

23 A. Everything.

24 Q. And you were asked some questions about different  
25 galleries.

1 First of all, let's just be clear, 2 Gallery is on  
2 the first floor, right?

3 A. Yes.

4 Q. And immediately above 2 Gallery, do you know what gallery  
5 is up there?

6 A. 4 Gallery.

7 Q. Okay. So, does it go 2, 4, 6, 8?

8 A. Yes.

9 Q. Okay. You were asked some about exact measurements and  
10 whether things are five feet or seven feet. The hallway is a  
11 straight hallway, right?

12 A. What do you mean *hallway*?

13 Q. Well, does the hallway turn? I know you testified that  
14 there's an L and you wrote your -- you drew your demonstrative  
15 where you can turn into the shower. From your cell, if you  
16 walk right outside your cell, it would be a straight line to  
17 walk out the door, correct?

18 A. Yes.

19 Q. And, at the time that you saw Qualls punch this inmate,  
20 was the door between your gallery and the entranceway, was  
21 that open or shut?

22 A. Exiting the building? The door exiting the building?

23 Q. No, you testified about a door to the gallery.

24 A. Yes, it's bars. It's -- Yeah, it was closed, but it's a  
25 C-shape, too, the structure.

1 Q. So, even when that door is closed you can see through it  
2 to some degree with your eyes standing at the front of the  
3 cell, right?

4 A. I could see through this door sitting in front of my cell  
5 with or without the mirror.

6 Q. Okay. And you can also see through it with your mirror?

7 A. Yes, looking at the TVs. Only thing is, it's like a cage  
8 with bars.

9 Q. When you wrote this letter, the letter that we have been  
10 talking about today to Internal Affairs in Springfield, was it  
11 your expectation that they would investigate and find out all  
12 the information necessary to understand exactly who was  
13 present and where?

14 A. Yeah, when I wrote to Springfield I was hoping that they  
15 investigate it.

16 Q. And nobody ever came to talk to you, right?

17 A. I didn't talk to anybody about this case other than you  
18 asking me in a interview real quick about what I wrote, no.

19 MS. GRADY: I have nothing else, Your Honor.

20 THE COURT: Thank you. Thank you, Mr. Smith. That  
21 will conclude your testimony.

22 MR. SMITH: All right. Thank you. You all have a  
23 nice day.

24 THE COURT: All right. You, too.

25 All right. Ladies and gentlemen, thank you. It's

1 been a long day, and I promised to always get you out of here  
2 before 5:00. My previous instruction about not talking about  
3 the case continues to apply, of course. Be careful going  
4 home, don't be thinking about the case, pay attention to the  
5 traffic. I would like you back here and ready to go at 8:30  
6 tomorrow morning. I know Deana got your lunch orders. We  
7 will get your lunch and we will work hard tomorrow and maybe  
8 you will get the case if not tomorrow, I think maybe early  
9 Thursday.

10 Okay. All rise for the jury.

11 (Jury out).

12 THE COURT: Be seated, everyone. I know our  
13 interpreter and our Court Reporter are about drained. I want  
14 to go over a few things.

15 We admitted Exhibit 8. Exhibit 3, I believe, was the  
16 only other one shown. Do you intend to move to admit Exhibit  
17 3?

18 MS. GRADY: So, Exhibit 3 is actually identical to  
19 what we have admitted through Exhibit 8.

20 THE COURT: Okay.

21 MS. GRADY: So, I think only one copy really needs to  
22 go back to the jury.

23 THE COURT: Absolutely. I wanted to make sure that's  
24 clear.

25 MS. GRADY: For the record, Plaintiff 3 equals what's

1     been admitted as Plaintiff's 8.

2             THE COURT:   Okay.   And, 29 you referred to that one  
3     is the demonstrative?

4             MS. GRADY:   Correct.

5             THE COURT:   That will be there.   It's just a  
6     demonstrative.

7             MS. GRADY:   Right.   We are not going to move that  
8     into evidence, but we do intend to use it at closing.

9             THE COURT:   Okay.   So, all we have at this point is  
10    8.   And that's five pages of Exhibit 8, correct?

11            MS. GRADY:   Pages 1 through 5 of Exhibit 8.

12            THE CLERK:   They're going to have to redact it.

13            THE COURT:   Okay.   So, you redact that and get the  
14    redacted version to Deana later.   She will get you straight.

15            MS. GRADY:   Okay.

16            THE COURT:   I would like to have everyone here at  
17    8:00 tomorrow.   I am going to ask for Mr. Nicolas to be here  
18    at 8:00, Counsel be here at 8:00.   The Defendants, as long as  
19    you are here and ready to go by 8:30, that will be fine.

20            What witnesses -- Do you still think we are on track  
21    to get through your witnesses quickly tomorrow?

22            MS. GRADY:   I do anticipate finishing tomorrow.   So,  
23    my only question is jury instructions, because I would like to  
24    be able to show the jury some of the instructions, so I would  
25    like to have a couple of exhibits.

1           THE COURT: So, Kristen is going to get you a copy  
2 before you leave today. We have been working on them. So,  
3 what I do is this will be -- We've gone through them, I went  
4 through them at lunch, and Kristen has been working on them of  
5 what I prefer between the ones -- I looked at the different  
6 ones that you offered. I always prefer the pattern where  
7 possible. We've made some clarifications on things, we've  
8 added a few. So, this is our working copy, what she's going  
9 to give to you. So, look at that tonight, and then I would  
10 like at 8:15 tomorrow to have an informal conference off the  
11 record. That's where you can just say, "Hey, I don't like  
12 this wording, this has a typo," whatever, and then we will  
13 finalize them, and then at some point tomorrow morning we can  
14 have our final conference. That's very straightforward where  
15 you just say what your objections are to anything, and that  
16 goes very quickly. And, like I said, I instruct before  
17 closings, so you can certainly use the instructions. We will  
18 have everything finalized. We will have done the final  
19 conference and you can use those during closings.

20           MS. GRADY: And, Your Honor, in case they are being  
21 worked on, for due process we should put on the record that we  
22 have dropped our due process claims and dropped the case  
23 against Hughes and Hart, so they should be --

24           THE COURT: We took those out. And any reference to  
25 seven defendants, we have taken that out. So, I think we are

1 good.

2 I will have Kristen e-mail. Are you okay to get an  
3 e-mail copy?

4 MR. TYRRELL: Yes.

5 THE COURT: Okay. Then if you want to we can search  
6 for something or whatever.

7 Okay. Anything else that we need to take up at this  
8 time?

9 MR. TYRRELL: Nothing further, no.

10 MS. GRADY: No, Your Honor.

11 THE COURT: Before we go, let me just quickly ask,  
12 Mr. Gonzalez, have you accurately translated these proceedings  
13 as you indicated you would do when taking the oath earlier  
14 today?

15 THE INTERPRETER: Yes, Your Honor, to the best of my  
16 knowledge I have.

17 THE COURT: All right. And, Mr. Nicolas, have you  
18 understood the translations provided and did you understand  
19 everything that was translated to you?

20 MR. NICOLAS: Yes, Your Honor.

21 THE COURT: All right. Everyone have a nice evening.  
22 Be careful going home, and I will see you bright and early  
23 tomorrow morning.

24 (Court is in recess.)  
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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/S/ Stephanie K. Rennegarbe  
Certified Shorthand Reporter

03/18/2019